93-756

No. _____

Supreme Court, U.S.
FILED
NOV 12 1993
OFFICE OF THE CLERK

In the

Supreme Court of the United States

October Term, 1993

MISSION OAKS MOBILE HOME PARK, a California General Partnership,

Petitioner,

v.

CITY OF HOLLISTER; HOLLISTER CITY COUNCIL; and HOLLISTER MOBILEHOME RENT COMMISSION,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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70 pp

QUESTIONS PRESENTED FOR REVIEW

1. Should District Courts dismiss lawsuits under the *Younger v. Harris*, 401 U.S. 37 (1971), abstention doctrine, when the federal plaintiff initiated the state proceeding and filed the state proceeding first to meet the ripeness requirement under the Just Compensation Clause of the United States Constitution? *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-97 (1985).

2. Can the filing of an *England* reservation in state court before federal claims have been decided in that court preserve federal claims for litigation in federal District Court, when the state action was filed first pursuant to the ripeness requirement for claims under the Just Compensation Clause? *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964).

3. Should parties who allege that their property has been taken by the government without payment of just compensation be forced to choose between forfeiting their right to a federal forum for all their federal claims, including nontakings claims, or forfeiting their takings claim?

PARTIES TO THE PROCEEDING

The parties to this action in the United States Court of Appeals for the Ninth Circuit were Mission Oaks Mobile Home Park, the City of Hollister, the Hollister City Council, and the Hollister Mobilehome Rent Commission.

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OPINION BELOW

The decision of the United States Court of Appeals for the Ninth Circuit is reported at 989 F.2d 359 (9th Cir. 1993), and is reproduced as Appendix A (App.). Page references are to the version in the appendix.

JURISDICTION

The decision of the Ninth Circuit was entered March 30, 1993. Petitioner filed a timely petition for rehearing, and rehearing was denied on August 13, 1993. Appendix B. The petition for writ of certiorari has been timely filed in accordance with Rule 13.4 of the Rules of this Court. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fifth Amendment to the United States Constitution provides in pertinent part: "[N]or shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 42 United States Code, § 1983, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage,

> of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

The Ninth Circuit Court of Appeals has spun a procedural tangle that threatens to close the doors of the federal courthouse to all who seek to vindicate their constitutionally guaranteed property rights. As a result, petitioner Mission Oaks Mobile Home Park (Mission Oaks) has been denied its day in court.

As described below in more detail, the unique procedural posture of this case affords this Court the opportunity to clear away the confusion without upsetting any court rulings on the merits. In brief, Mission Oaks filed a complaint in state court attacking a municipal ordinance, then filed a writ petition in state court challenging the evidentiary findings of the commission applying the ordinance. Before any rulings were made on the merits, Mission Oaks filed a federal complaint challenging the ordinance facially and as applied, and filed a reservation of rights in the only state proceeding that contained the federal causes of action.

Because the state complaint was filed first, the District Court and the Ninth Circuit refused to hear the federal case. Meanwhile, the state action has been stayed.

On May 1, 1989, the City of Hollister, California, adopted Ordinance No. 728, a rent control scheme that singles out Mission Oaks from all rental property owners in the city. Among other things, Ordinance No. 728 replaces the price set in the marketplace for the rental of mobile home park spaces with a government-imposed limit on rent increases that ensures that the income of Mission Oaks will not keep pace with inflation.[1]

Mission Oaks on September 28, 1990, filed a challenge to Ordinance No. 728 in the Superior Court of the State of California for the County of San Benito (state complaint). In addition to causes of action under state law, the state complaint contained facial challenges to Ordinance No. 728 on federal takings, due process, and equal protection grounds, and under 42 U.S.C. § 1983. Since it believed that Ordinance No. 728 worked a taking of its property without

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[1] Rent increases that exceed 80% of the inflation rate or 8% of the prior rent are subject to review. In the review process, rent increases will not be permitted to increase net operating income by more than 40% of the inflation rate. Code of the City of Hollister Chapter 13-B, §§ 13B-5, 13B-30.

just compensation, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, Mission Oaks had no choice but to file a complaint in the Superior Court prior to filing a federal complaint. This Court held in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), that a cause of action under the Just Compensation Clause of the Fifth Amendment is not ripe until the property owner is denied compensation through the procedures provided by the state for securing such compensation. 473 U.S. at 194-97.

Although Mission Oaks would have preferred that a federal court decide its federal claims, the possibility of merger or bar extinguishing these claims forced it to include the federal claims in the state complaint. This fear proved to be an accurate forecast and not a phobia, as the Ninth Circuit subsequently held in *Palomar Mobilehome Park Association v. City of San Marcos*, 989 F.2d 362 (9th Cir. 1993), that res judicata will bar federal claims that could have been but were not litigated in a completed state court proceeding, *including the takings claim that does not ripen until the state denies compensation*. 989 F.2d at 364-65.

Before the Superior Court had ruled on any of the claims brought by Mission Oaks, the Ninth Circuit in *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951

(9th Cir. 1991), *vacated*, ___ U.S. ___, 121 L. Ed. 2d 4 (1992), *modified*, 987 F.2d 662, 663 (9th Cir. 1993), determined that compensation was unavailable in California courts under a physical taking attack on mobile home rent control, and thus allowed plaintiffs to file suits under this theory directly in the federal District Court. *Sierra Lake Reserve*, 938 F.2d at 955 (futility exception to *Williamson County*). As Mission Oaks contended that Ordinance No. 728 combined with state regulations to effect a physical transfer of a property interest to its tenants, it soon thereafter filed a complaint in the United States District Court for the Northern District of California (federal complaint).[2] This complaint attacked Ordinance No. 728 both facially and as applied by the Hollister Rent Commission in a decision dated May 13, 1991.[3]

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[2] This Court's decision in *Yee v. Escondido*, 503 U.S. __, 118 L. Ed. 2d 153 (1992), rejected the physical taking theory that allowed property owners to file takings claims directly in the federal District Court. This is, at this point, irrelevant. The equal protection and due process claims are ripe and have been properly brought in the District Court.

[3] This decision was also the subject of a petition for writ of mandate (writ petition) filed in the Superior Court on July 12, 1991. The writ petition did not raise any federal

(continued...)

The federal complaint alleged a taking without just compensation, as well as due process, equal protection, substantive due process and federal civil rights violations under the United States Constitution, and a variety of state law causes of action. Mission Oaks attempted to insulate its federal facial claims from state court determination by filing a reservation in the Superior Court on October 1, 1991, prior to any court rulings, pursuant to *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964). Appendix C. The City of Hollister's motion to strike the reservation was denied on October 22, 1991. App. A-5. That same day, Mission Oaks' motion for summary judgment and the city's motion for judgment on the pleadings were denied. *Id.* On May 7, 1992, the Superior Court filed an order staying the state case pending the resolution of the federal action. Appendix E.

The United States District Court for the Northern District of California refused to exercise jurisdiction over the federal complaint and dismissed the complaint pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). *Mission Oaks*

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[3] (...continued)
issues, and Mission Oaks did not litigate federal issues in the proceeding. The petition was denied on December 20, 1991, and the California Court of Appeal for the Sixth Appellate District affirmed this decision on June 7, 1993.

Mobile Home Park v. City of Hollister, 788 F. Supp. 1117, 1122 (N.D. Cal. 1992); Appendix D-16. The court ruled that the *England* reservation was not applicable, since the federal complaint was filed after "the case had proceeded substantially" in the state court. App. D-15-16.

The Ninth Circuit affirmed this decision. *Mission Oaks Mobile Home Park v. City of Hollister*, App. A-10-12. Petitioner's petition for rehearing and suggestion for a rehearing en banc, filed pursuant to Federal Rules of Appellate Procedure, Rules 35 and 40, was denied on August 13, 1993. App. B.

The decision below closes the federal courthouse doors on the ripe and timely federal equal protection and due process claims just because a property owner sought to pursue a takings claim and was forced to first seek compensation in a state court. There is no reason why claims of violations of rights secured by the United States Constitution, which have not yet been decided by any court, cannot be litigated in a federal District Court.

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REASONS FOR GRANTING THE WRIT

The Ninth Circuit's decision in this case conflicts with the decisions of other Courts of Appeals on the appropriateness of *Younger* abstention under these

circumstances. It also conflicts with the decisions of other Courts of Appeals allowing *England* reservations when a state court case is filed prior to the federal court case, and allowing for reservations outside of the *Pullman* abstention context. *See Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). Supreme Court Rule 10.1(a) provides that the existence of conflicting rulings in the circuits is a reason for granting review. In addition, the federal procedural questions are important matters that should be decided by this Court, as provided in Supreme Court Rule 10.1(c).

I

THE NINTH CIRCUIT HAS EXTENDED THE DOCTRINE OF YOUNGER ABSTENTION TO AREAS THIS COURT AND THE OTHER COURTS OF APPEALS HAVE NOT SANCTIONED

Younger abstention is rooted in the salutary notion that the federal government should "not unduly interfere with the legitimate activities of the States." *Younger*, 401 U.S. at 44. *Younger* abstention requires the dismissal of a federal proceeding, *see Hicks v. Miranda*, 422 U.S. 332, 350 (1975), and was first adopted by this Court to prevent state court defendants in criminal prosecutions from seeking a federal injunction of the state proceedings. *Younger*, 401 U.S. at 53-54. This Court had subsequently extended

the doctrine to bar declaratory relief, *Samuels v. Mackell*, 401 U.S. 66 (1971), and to prevent federal court interference with civil enforcement proceedings brought by the state "in aid of and closely related to criminal statutes," *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975) (injunction against exhibiting obscene films under public nuisance statute).

This Court has proceeded to apply *Younger* in the contexts of enforcement proceedings that were not related to criminal statutes (*see Juidice v. Vail*, 430 U.S. 327 (1977)) and even in proceedings between two private parties (*Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 18 (1987)). Throughout the evolution of the doctrine, however, there has been one constant: the federal plaintiff was the *subject* of the enforcement proceedings in the state court or administrative process.[4] This Court has never held that *Younger* abstention

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[4] For purposes of *Younger*, administrative hearings that are "judicial in nature" and the state court review of these decisions are considered a unitary system. *See Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 627-29 (1986). Thus, the target of a coercive administrative hearing who is technically the plaintiff or petitioner in state court is still the subject of enforcement proceedings. *See Fresh International Corp. v. Agricultural Labor Relations Board*, 805 F.2d 1353, 1360 n.8 (9th Cir. 1986).

is appropriate in a case in which the federal plaintiff instigated the state proceedings.

It should be obvious that *Younger* is not triggered when parallel proceedings are initiated by the same party. In *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350 (1989) (*NOPSI*), this Court reversed the Fifth Circuit's finding that *Younger* abstention was required when a state court challenge to a state public utility ratemaking order was pending. *NOPSI*, 491 U.S. at 373. The federal defendants' attempt to characterize the state judicial review process as a continuation of the administrative action initiated by the ratemaking body was rejected by the Court.[5] The *NOPSI* Court did not find abstention appropriate under *Younger* despite the pendency of the state court review, explaining:

> [T]here is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts. Viewed as it should

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[5] The Court based this conclusion on the finding that public utility ratemaking was "an essentially legislative" and not judicial act. *NOPSI*, 491 U.S. at 371. Under California law, rent control boards can exercise some quasi-judicial functions. *See McHugh v. Santa Monica Rent Control Board*, 49 Cal. 3d 348, 372 (1989). The important point for our purposes is that the regulatory body *initiated* the challenged administrative proceedings in *NOPSI*. 491 U.S. at 356.

> be, as no more than a state-court challenge to completed legislative action, the Louisiana suit comes within none of the exceptions that Younger and later cases have established.

NOPSI, 491 U.S. at 373. Thus, the inability of the federal defendants to relate NOPSI's state court action back to the administrative proceedings which were brought *against* NOPSI removed the case from the ambit of *Younger* abstention.

This approach is firmly rooted in the prior decisions of this Court. In *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, this Court held that *Younger* abstention was required when a party against whom administrative proceedings were filed sought to enjoin those proceedings by filing a lawsuit under 42 U.S.C. § 1983 in the federal District Court. *Dayton*, 477 U.S. at 628. The *Dayton* Court distinguished the case *Patsy v. Board of Regents*, 457 U.S. 496, 516 (1982), which held that administrative remedies need not be exhausted before filing a federal civil rights claim under 42 U.S.C. § 1983: "Unlike Patsy, the administrative proceedings here are *coercive rather than remedial*, began before any substantial advancement in the federal action took place, and involve an important state interest." *Dayton*, 477 U.S. at 627 n.2 (emphasis added). *See also Patsy*, 457 U.S. at 518 (White, J., concurring)

("[t]he result today is also fully consistent with our decisions that a *defendant* in a civil or administrative enforcement proceeding may not enjoin and sidetrack that proceeding by resorting to a § 1983 action in federal court." (Emphasis added)).

To extend *Younger* to cover pending state actions that were *initiated* by the federal plaintiff is to take the doctrine far afield. The Ninth Circuit once recognized this, as *Fresh International Corp. v. Agricultural Labor Relations Board* includes this statement:

> Although *Younger* abstention ordinarily would not apply when a federal plaintiff also is the plaintiff in state court ... it applies here, because the judicial proceeding filed by [plaintiff] was not truly voluntary; [plaintiff] petitioned for review only because the [defendant] initiated agency proceedings and entered an order against the company.

Id. at 1360 n.8 (citation omitted).[6]

A survey of other Circuits underscores the complete inappropriateness of *Younger* abstention in cases where the federal plaintiff initiated the state proceedings. As could be

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[6] The Ninth Circuit departed from this principle in *Beltran v. State of California*, 871 F.2d 777, 781 (9th Cir. 1988), perhaps inadvertently, as the court failed even to mention the significance of the same parties initiating the federal and state proceedings.

expected, it is rare that a Court of Appeals would even address the issue. However, at least four Circuits have explicitly rejected the approach followed in the court below and expressly confine *Younger* abstention to circumstances in which a party who is involuntarily subject to state coercive proceedings attempts to disrupt those proceedings via a federal lawsuit. *See Kercado-Melendez v. Aponte-Roque*, 829 F.2d 255, 261 (1st Cir. 1987) (no abstention when federal plaintiff had "option to initiate a state proceeding to remedy a constitutional wrong perpetrated by a state actor"); *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Commission*, 791 F.2d 1111, 1117 (3d Cir. 1986) (same parties were plaintiffs in state and federal court and did not seek to enjoin a state judicial proceeding, tipping balance against *Younger* abstention and in favor of leaving plaintiffs "'free to bring suit in both the state and federal forums for the same cause of action'" (citation omitted)); *Crawley v. Hamilton County Commissioners*, 744 F.2d 28, 30 (6th Cir. 1984) ("the federal plaintiffs are also *plaintiffs* in the state court action ... [and] are not attempting to use the federal courts to shield them from state court enforcement efforts. Accordingly, there is no basis for *Younger*

abstention" (emphasis in original));[7] *Hinrichs v. Whitburn*, 975 F.2d 1329, 1333 (7th Cir. 1992) ("'*Younger* is confined to cases in which the federal plaintiff ha[s] engaged in conduct actually or arguably in violation of state law, thereby exposing himself to an enforcement proceeding in state court'" (citation omitted)).[8]

When the federal plaintiff is not attempting to interfere with state proceedings that were initiated coercively against it, the concern is not present that the federal action will "unduly interfere" with state activities, and federal court determinations do not undermine "a proper respect for state functions." *Younger*, 401 U.S. at 44. On the contrary, since *Younger* is the exception and not the rule, under these circumstances the federal court has a "virtually unflagging obligation" to exercise its jurisdiction. *Colorado River Water*

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[7] Amazingly, the District Court below uses this very citation to support its decision that *Younger* abstention *was* appropriate. *Mission Oaks*, 788 F. Supp. at 1122. No one can possibly contend that there were "enforcement efforts" directed against petitioner in the Superior Court.

[8] The most cogent analysis of the rationale behind the requirement that the federal plaintiff be the subject of state enforcement proceedings was written by Judge Posner in an opinion which has been vacated by this Court due to mootness. *Alleghany Corp. v. Haase*, 896 F.2d 1046, 1051-53 (7th Cir. 1990), *vacated sub nom. Dillon v. Alleghany Corp.*, ___ U.S. ___, 113 L. Ed. 2d 441 (1991).

Conservation District v. United States, 424 U.S. 800, 817 (1976). This Court has of course "never held that in all cases where there are parallel state and federal proceedings involving a federal constitutional issue, the federal court should hold its hand and allow the state court to proceed first." *Deakins v. Monaghan*, 484 U.S. 193, 207 (1988) (White, J., concurring). Both suits should go forward. *See Kline v. Burke Construction Co.*, 260 U.S. 226, 230-32 (1922).

Were the domain of *Younger* to extend over cases in which the federal plaintiff initiated the action in the state courts, property owners throughout the country would find themselves in a quandary. *Williamson County* requires that they first seek and be denied compensation in state court before a claim under the Just Compensation Clause of the United States Constitution can ripen. 473 U.S. at 194-97. But their right to a federal forum for their other, ripe federal claims will be denied upon filing the state lawsuit unless prior to the state court filing "proceedings of substance on the merits have taken place in the federal court." *Hicks*, 422 U.S. at 349. Thus, the right to litigate in federal court will depend on such factors as the availability of injunctive relief, *see Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 238 (1984) (preliminary injunction is a proceeding of

substance on the merits), the speed with which this relief can be secured or other proceedings on the merits can be scheduled, and the length of the state statute of limitations period--instead of the source of the right being asserted.

Parties with a claim under the Just Compensation Clause may thus be forced to choose between forfeiting either the takings claim or the federal forum. This Court should grant review to settle this Circuit conflict and determine whether *Younger* should be extended in a manner that creates this Hobson's choice.

II

THE NINTH CIRCUIT'S REFUSAL TO ALLOW AN ENGLAND RESERVATION IN THIS CASE CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS

Petitioner found itself in an awkward procedural position when *Sierra Lake Reserve* was issued by the Ninth Circuit. Petitioner had brought both state and federal claims in the Superior Court, since *Williamson County* required that the takings claim be ripened by a denial of compensation in state court, and a failure to raise the federal claims might result in their extinction under res judicata principles once final judgment was entered in the state court. *See Palomar Mobilehome Park Association*, 989 F.2d at 364-65. Then *Sierra Lake Reserve* allowed petitioner to bring its physical

taking claim directly in the federal court, which is where petitioner would rather have all of its federal claims decided. Since none of the federal issues had yet been decided by the state court, petitioner seized upon a logical solution to this dilemma and filed an *England* reservation.

The reservation was denied effect by the District Court, because the federal case was not stayed pursuant to *Pullman* abstention, and because the state case had "proceeded substantially" prior to the filing of the federal case. App. D-15-16. The Ninth Circuit affirmed, on the grounds that *England* reservations are "inappropriate in the context of *Younger* abstention." App. A-11. But the procedural circumstances that require the *England* reservation occur outside of the *Pullman* abstention context, as several other Courts of Appeals have held. A reservation of the right to litigate federal issues in a federal court *is appropriate* when parties are forced into the state court in order that a Just Compensation Clause claim can ripen. The Eleventh Circuit has held accordingly, *Fields v. Sarasota Manatee Airport Authority*, 953 F.2d 1299, 1306 (11th Cir. 1992), in conflict with the decision in the court below. This Court should grant certiorari to decide whether property owners can reserve their federal claims in state court proceedings that *Williamson County* requires them to bring.

A. England Reservations Should Not Be Confined to Cases Involving Pullman Abstention

This Court in *England* created a procedure to aid parties who are forced to litigate their case involuntarily in the state court while the federal court stayed proceedings under the *Pullman* abstention doctrine. *England* provided that a party could preserve its federal claims for determination by the federal court, by making a reservation on the record in the state court. *England*, 375 U.S. at 421. The *England* Court rejected the notion that a party is entitled to no more than this Court's potential review of a state court determination of federal rights:

> [S]uch review, even when available by appeal rather than only by discretionary writ of certiorari, is an inadequate substitute for the initial District Court determination ... to which the litigant is entitled in the federal courts. This is true as to issues of law; it is especially true as to issues of fact.

Id. at 416. But since the case *Government and Civic Employees Organizing Committee v. Windsor*, 353 U.S. 364, 365-66 (1957), seemed to require that a party bring federal claims in the state court when the federal court abstains to allow state court interpretation of a state law, res judicata could preclude federal trial court litigation. *England*, 375 U.S. at 414-15.

In crafting a solution to this problem, the *England* Court recognized that

> [t]he line drawn should be bright and clear, so that litigants shunted from federal to state courts by application of the abstention doctrine will not be exposed ... to procedural traps operating to deprive them of their right to a District Court determination of their federal claims.

Id. at 418.

England arose in the context of *Pullman* abstention, in which the federal proceeding is filed first and is stayed pending the state court determination of unsettled issues of state law that could avoid the necessity of reaching the federal question. *See Railroad Commission of Texas v. Pullman Co.*, 312 U.S. at 501. This Court has on occasion implied that *England* is appropriate only for *Pullman* cases. *See Allen v. McCurry*, 449 U.S. 90, 101 n.17 (1980); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 480 n.14 (1983). But *Pullman* cases are not the only ones where "procedural traps" lurk that can deprive a party of its right to have its federal claims determined by a District Court. The reasoning of *England* is equally valid in cases such as this one, in which a party was forced involuntarily into the state court in order that its federal takings claim could ripen. *See Williamson County*, 473 U.S. at 195.

Some Courts of Appeals have recognized that an *England* reservation is not necessarily confined to the *Pullman* context. *See Bradley v. Pittsburgh Board of Education*, 913 F.2d 1064, 1071 (3d Cir. 1990) ("look to the rationale underlying *England* to determine if it has equal applicability" outside the *Pullman* context); *Barnes v. McDowell*, 848 F.2d 725, 732 (6th Cir. 1988) (plaintiff filed in state court first and "his constitutional claim never was resolved by any of the state tribunals," achieving the equivalent of an *England* reservation). Other Circuits have held the opposite. *See Schuster v. Martin*, 861 F.2d 1369, 1374 (5th Cir. 1989) (abstention required for *England* reservation); *Duty Free Shop, Inc. v. Administracion de Terrenos de Puerto Rico*, 889 F.2d 1181, 1183 (1st Cir. 1989) (*England* reservations are for *Pullman* abstention cases, not *Younger* abstention).

This Court should grant the petition for certiorari in order to settle this important procedural question and adopt a "bright and clear rule" so litigants can avoid the "procedural traps" that are sprung in non-*Pullman* contexts.

B. When a Plaintiff Is Forced to Seek Compensation in State Court in Order for Its Federal Takings Claim to Ripen, Plaintiff Is Not Voluntarily in State Court, and England Should Apply

By its terms, the reservation prescribed in *England* prevents a party which is forced by federal law to bring its causes of action in state court from losing its right to a federal forum. When *England* applies, an express reservation is not even necessary, but will always be effective. This Court held:

> [A]n explicit reservation is not indispensable; the litigant is in no event to be denied his right to return to the District Court unless it clearly appears that he *voluntarily* did more than Windsor required and *fully litigated* his federal claims in the state court. When the reservation has been made, however, his right to return will *in all events* be preserved.

England, 375 U.S. at 421-22 (emphasis added; footnotes omitted). Petitioner has certainly not fully litigated its federal claims in the state court. Those claims have not been decided, and the entire state case has been stayed. App. E.

Nor can it be said that petitioner was *voluntarily* in state court. In order to pursue a claim for a taking without just compensation under the Fifth and Fourteenth Amendments, petitioner had to bring a lawsuit in state court to ripen the claim. *Williamson County*, 473 U.S. at 195;

Sinaloa Lake Owners Association v. City of Simi Valley, 882 F.2d 1398, 1402-04 (9th Cir. 1989). Under the circumstances, petitioner has been "shunted from federal to state courts," *England*, 375 U.S. at 418, just as much as a party subject to *Pullman* abstention.

This fact of procedural life has been recognized and corrected by one other Court of Appeals. The Eleventh Circuit has held that the *England* reservation procedure is appropriate in the context of takings claims even though *Pullman* abstention does not apply when the state complaint has been filed prior to the federal complaint. *Fields*, 953 F.2d at 1306.

The *Fields* court extended *England* to cover takings cases because, "[t]he operation of *Williamson County*, much like the abstention doctrine at issue in *England*, forces would-be federal court litigants to first litigate their claims in state court." 953 F.2d at 1304. *Fields* rested on the holding that property owners "who are forced to pursue state court proceedings in order to satisfy exhaustion requirements imposed by federal law incident to a takings clause claim are 'involuntarily' in the state courts." 953 F.2d at 1306.

The *Fields* court properly recognized that "the question is whether the citizens of this country are to be barred from ever vindicating a federal constitutional right through the

federal court system." 953 F.2d at 1307 n.8. Petitioner contends that a rent control ordinance that applies only to petitioner and arbitrarily limits its income violates the Equal Protection, Due Process, and Takings Clauses of the United States Constitution. The Just Compensation Clause claim requires initial litigation in state court, but a final judgment in that court will serve to bar litigation of the nascent federal takings claim as well as all other federal claims that could have been brought in that forum. *Palomar Mobilehome Park Association*, 989 F.2d at 364-65 (in which an explicit reservation was not attempted).

Property owners seeking to protect their constitutional rights are thus forced either to forego a state lawsuit--thereby forfeiting their claims under the Takings Clause--and file their other claims in the federal District Court, or to file the nontakings claims in federal court and hope that the state court proceeding does not end first and extinguish these other constitutional claims in the federal court via res judicata. The Eleventh Circuit provides a sensible third option, allowing an *England* reservation to preserve the federal claims while the takings claim is ripened through a state court proceeding. This Court should grant review to settle this conflict between Circuits and determine exactly how

completion of the state case that is currently on hold will affect petitioner's federal claims that have been reserved.

CONCLUSION

By inappropriately extending the *Younger* doctrine and restricting the use of an *England* reservation, the Ninth Circuit has jeopardized the ability of a party with a cause of action under the Just Compensation Clause to have its day in federal court. Petitioner should not have had to choose between forfeiting its takings claim or forfeiting its right to a federal forum to protect rights secured by the United States Constitution. Petitioner has not yet had its federal claims decided by any court, and has properly invoked its right to a federal forum. Review by this Court is necessary to restore this right.

Other Circuits have kept *Younger* within its proper bounds, and allow for *England* reservations outside the *Pullman* abstention context. Review by this Court is necessary to settle these conflicts, remove the confusion, and reopen the doors to the federal courthouse. Petitioner

respectfully urges this Court to grant this petition for writ of certiorari.

DATED: November, 1993.

Respectfully submitted,

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APPENDIX A
A-1

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MISSION OAKS MOBILE HOME PARK, a California General Partnership,	No. 92-15692
Plaintiff-Appellant,	D.C. No. CV-91-20733-JW(EAI)
v.	OPINION
CITY OF HOLLISTER; HOLLISTER MOBILEHOME RENT COMMISSION,	
Defendants-Appellees.	

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Argued and Submitted
March 2, 1993--Pasadena, California

Filed March 30, 1993

Before: Dorothy W. Nelson, Charles Wiggins, and Edward Leavy, Circuit Judges.

Opinion by Judge Wiggins

SUMMARY

Civil Litigation and Procedure/Jurisdiction

The court of appeals affirmed a judgment of the district court. The court held that when the plaintiff failed to identify unambiguous authority to the contrary, a state court was assumed to be an adequate forum in which to raise a federal takings claim, and *Younger* abstention was proper.

Appellant Mission Oaks Mobile Home Park sued appellee City of Hollister in state court, challenging the City's mobilehome park rent control ordinance. After a trial date had been set, and before trial, Mission Oaks filed an action in district court, alleging the same claims. The district court dismissed the complaint under the *Younger* doctrine.

Mission Oaks relied on a Ninth Circuit opinion holding that a plaintiff challenging a mobilehome park rent control ordinance did not have to bring a claim in California state court before its federal claim would ripen because those courts disfavored takings claims based on rent control ordinances and plaintiff would have been unable to obtain just compensation through an inverse condemnation action under any circumstances.

[1] The state court proceedings were underway before the federal action was initiated, and were ongoing at the time the district court abstained, satisfying the first prong of *Younger*. [2] California had a substantial interest in enforcing and considering the constitutionality of mobilehome park rent control ordinances, meeting *Younger*'s second prong. [3] The Supreme Court had vacated the decision on which Mission Oaks relied. Nor was that decision made in the context of a *Younger* abstention. Further, the Supreme Court had overruled another Ninth Circuit decision which had been important to the conclusion by Mission Oaks's authority that such takings claims were viewed skeptically by California courts. In the absence of unambiguous authority to the contrary, state court proceedings are assumed to be adequate forums in which to raise federal takings claims. *Younger*'s final prong was met.

[4] Mission Oaks could fully assert and pursue its takings claim in state court. Because of identity of issues, federal proceedings would interfere with ongoing state proceedings, and federal rulings could easily disrupt the state proceedings. Thus, the district court did not abuse its discretion by abstaining.

COUNSEL

Robert S. Coldren, Peter K. Rundle, Hart, King & Coldren, Santa Ana, California, for plaintiff-appellant.

Henry E. Heater, Endeman, Lincoln, Turek & Heater, San Diego, California, for the defendants-appellees.

OPINION

WIGGINS, Circuit Judge:

Mission Oaks Mobile Home Park ("Mission Oaks"), a mobilehome park in Hollister, California, brought suit in federal court challenging the City of Hollister's ("City") mobilehome park rent control ordinance. Mission Oaks had filed a challenge to the rent control ordinance in state court alleging the same basic violations prior to filing the federal suit. The district court dismissed the federal suit on *Younger* abstention grounds. *Mission Oaks Mobile Home Park v. City of Hollister*, 788 F. Supp. 1117, 1118-22 (N.D. Cal. 1992). We have jurisdiction over this timely appeal pursuant to 28 U.S.C. § 1291. We affirm.

FACTS

Mission Oaks filed an action in state court in September, 1990, challenging the City's Mobilehome Park

Rent Control Ordinance on several grounds. In February 1991, Mission Oaks filed a petition with the Hollister Rent Commission to increase rent pursuant to the procedure outlined in the ordinance. The increase was approved but in an amount significantly lower then requested. In July, 1991, Mission Oaks filed a motion for partial summary judgment and, a day later, a petition for a Writ of Mandate challenging the Commission's decision. In October, 1991, Mission Oaks filed a "Reservation to Litigate Federal Claims in the United States District Court."

At a hearing on October 22, 1991, the Superior Court denied Mission Oaks's motion for summary judgment, the City's motion for judgment on the pleadings, and the City's motion to strike the Reservation. Two months later, a hearing was held on the writ challenging the Rent Commission's decision, and the court denied the writ. The Superior Court set a trial date for May, 1992.

On October 30, 1991, Mission Oaks filed an action in federal district court alleging essentially the same claims as in the state court action. The City of Hollister moved for dismissal on several grounds. The district court dismissed the case, concluding "that dismissal under the *Younger* abstention doctrine [was] appropriate." *Mission Oaks*, 788 F. Supp. at 1119.

STANDARD OF REVIEW

Whether a case meets the requirements of a particular abstention doctrine is a question of law that we review de novo. *Gartrell Constr., Inc. v. Aubry*, 940 F.2d 437, 441 (9th Cir. 1991) (reviewing a district court's dismissal of a case based on *Younger* abstention). Once we have determined that the requirements are met, we review the district court's actual decision to abstain only for an abuse of discretion. *See Privitera v. California Bd. of Medical Quality Assurance*, 926 F.2d 890, 895 (9th Cir. 1991).

DISCUSSION

Younger abstention embodies "a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). Under *Younger* and its progeny, "'abstention is appropriate . . . if (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise federal questions.'" *Beltran v. California*, 871 F.2d 777, 781 (9th Cir. 1988) (quoting *Fresh Int'l Corp. v. Agricultural Labor Relations Bd.*, 805 F.2d 1353, 1357-58 (9th Cir. 1986)).

[1] The first prong requires that the state proceedings be ongoing. This requirement is met by showing that "'the state proceedings were underway before initiation of the federal proceedings.'" *Kitchens v. Bowen*, 825 F.2d 1337, 1341 (9th Cir. 1987), *cert. denied*, 485 U.S. 934 (1988) (citation omitted). In this case, not only were the state proceedings underway before suit was filed in federal court, they were still ongoing when the district court decided to abstain. The first prong is satisfied.

The second prong requires that the proceedings implicate important state interests. Mission Oaks contends that this prong is not met, relying primarily on the fact that rental rates are regulated by local ordinance rather then statewide law. We reject Mission Oaks's argument and conclude that important state interests are implicated in these proceedings.

[2] The district court inferred that California has a substantial interest in enforcing and considering the constitutionality of mobilehome park rent control ordinances from the fact that the state has regulated mobilehome parks extensively. *Mission Oaks*, 788 F. Supp. at 1121. While Mission Oaks argues that the decision to allow local governments substantial control over mobilehome park rental rates evinces lack of an important "state" interest, we

disagree. It may well be that the state has determined that local government action will best address the problem as it exists in each community. Moreover, we believe that the district court was correct in finding that "California has a substantial interest in enforcing and considering the constitutionality of mobilehome park rent control ordinances." *Id.*; *cf. Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 625-29 (1986) (indicating that a wide range of interests qualify as important state interests for purposes of *Younger* abstention); *Fresh Int'l Corp.*, 805 F.2d at 1358 (also indicating that many varied interests satisfy the second prong of the *Younger* analysis). The second prong is satisfied.

The third and final prong requires that the state proceedings provide an adequate opportunity to raise federal questions. Relying on this court's decision in *Sierra Lakes Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991), *vacated*, 113 S. Ct. 31 (1992), Mission Oaks argues that California courts provide an inadequate forum in which to raise a federal "takings" claim.

We conclude, however, that *Sierra* is inapposite. In *Sierra*, this court considered whether a plaintiff challenging a mobilehome park rent control ordinance had to bring a claim in state court before a federal claim would be

considered ripe. The court held that no state court action was necessary because the plaintiff would be unable to "'obtain just compensation through an inverse condemnation action under any circumstances.'" *Id.* at 955 (citation omitted).

[3] First, we note that the Supreme Court has vacated the *Sierra* decision. *City of Rocklin v. Sierra Lakes Reserve*, 113 S. Ct. 31 (1992). Second, *Sierra* neither arose nor was considered in the context of *Younger* abstention. Third, one of the principal reasons for the court's conclusion that California courts take "a dim view of takings claims based on rent control ordinances," *Sierra*, 938 F.2d at 955, was the state appellate court's refusal to follow this court's opinion in *Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1987), *cert. denied* 485 U.S. 940 (1988), which the Supreme Court has subsequently overruled. *See Yee v. City of Escondido*, 112 S. Ct. 1522, 1526-29 (1992). Finally, we refuse to find that the courts of California are inadequate forums in which to raise federal takings claims. The Supreme Court has indicated that it will assume that state court proceedings are adequate "in the absence of unambiguous authority to the contrary." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15, (1987). Mission Oaks has failed to identify any such unambiguous authority. We are

convinced, as was the district court, that the state courts will provide Mission Oaks an adequate opportunity to raise federal questions. *Mission Oaks*, 788 F. Supp. 1122. Thus, all the prongs of the *Younger* abstention doctrine are satisfied.

We must determine, then, whether the district court abused its discretion by abstaining. *See Privitera*, 926 F.2d at 895. Mission Oaks contends that this court's decision in *Lebbos v. Judges of Super. Ct., Santa Clara County*, 883 F.2d 810 (9th Cir. 1989), indicates that the court did abuse its discretion and that abstention was inappropriate in this case.

[4] In *Lebbos*, this court held that abstention was inappropriate because the very nature of the proceedings in state court prevented the complaining party from fully pursuing his federal claims in that forum. *Id.* at 817. In addition, the court concluded that the federal proceedings would not interfere in any way with the ongoing state proceedings. *Id.* Here, however, the facts are different. Mission Oaks can fully assert and pursue its federal takings claims in the state action. Moreover, because both the state and federal cases involve takings issues, we believe that the federal proceedings in this case would interfere with the ongoing state proceedings. Both proceedings would be

considering basically the same questions, the same evidence, and the same arguments, though under different theories of law. The rulings of the federal court on any particular issue could easily disrupt the state proceedings. Thus, we conclude that the *Lebbos* is inapposite and that the district court did not abuse its discretion.

Mission Oaks attempted to reserve its federal claims for federal adjudication by filing a reservation of those claims in the state court over a year after the case was filed. We conclude that such a reservation is inappropriate in the context of *Younger* abstention. *See Beltran*, 871 F.2d at 783 n.8 ("[W]hen *Younger* abstention applies, federal plaintiffs cannot reserve their federal claim from state court adjudication for later decision by the federal court.").

Finally, we reach the City's request for attorney's fees under Rule 38 of the Federal Rules of Appellate Procedure. Under that rule, we have discretion to award fees for the bringing of a frivolous appeal. We conclude that this case does not warrant such sanctions. While we disagree with most of Mission Oaks's arguments, the appeal was not frivolous. Even in the face of precedent, Mission Oaks is entitled to make a good faith argument for reconsideration of existing law. Mission Oaks's arguments may not have carried the day, but they certainly are not "wholly without

merit." *See Wilcox v. Commissioner of Internal Revenue*, 848 F.2d 1007, 1009 (9th Cir. 1988).

AFFIRMED.

APPENDIX B

B-1 Filed August 13, 1993

Not for Publication

United States Court of Appeals

For the Ninth Circuit

MISSION OAKS MOBILE Home Park, a California General Partnership,	)	No. 92-15692
Plaintiff-Appellant,	)	D.C. No. CV-91-20733-JW(EAI)
v.	)	ORDER
CITY OF HOLLISTER; HOLLISTER MOBILEHOME RENT COMMISSION,	)	
Defendants-Appellees.	)	

Before: D.W. NELSON, WIGGINS, and LEAVY, Circuit Judges

The panel as constituted in the above case has voted unanimously to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc hearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

APPENDIX C
C-1

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Attorneys for Plaintiff, Mission Oaks Mobilehome Park

Filed October 1, 1991

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BENITO

MISSION OAKS MOBILEHOME PARK,	CASE NO. 17362
Plaintiff and Petitioner,	RESERVATION TO LITIGATE FEDERAL CLAIMS IN THE UNITED STATES DISTRICT COURT [England v. Louisiana State Board of Medical Examiners]
vs.	
CITY OF HOLLISTER, and DOES 1 through 100, inclusive,	
Defendants and Respondents.	

TO THE ABOVE-ENTITLED COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff Mission Oaks Mobilehome Park ("Plaintiff") hereby advises all parties to this action and the above-entitled Court that Plaintiff expressly reserves its rights to raise and litigate its rights pursuant to the United States Constitution

and Federal Statutes, as fully set forth in the Complaint on file herein, in the United States District Court pursuant to England v. Louisiana State Board of Medical Examiners, 375 U.S. 411, 84 S.Ct. 461 (1964). (A copy of which is attached hereto and incorporate herein by reference).

Dated: September 30, 1991 Respectfully submitted,

HART, KING & COLDREN

By/s/ JAMES M. TRUSH
Robert S. Coldren
James M. Trush
Attorneys for Plaintiff Mission Oaks Mobilehome Park

[ATTACHMENT OMITTED]

APPENDIX D

D-1 Filed March 30, 1992

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MISSION OAKS MOBILE HOME PARK,	)
	) NO. C-91-20733 JW
Plaintiff,	)
	) SECOND AMENDED
vs.	) ORDER FOR
	) PUBLICATION GRANTING
	) DEFENDANTS' MOTION
CITY OF HOLLISTER, et al	) TO DISMISS
	)
	)
Defendants.	)
	)

I. INTRODUCTION

Plaintiff Mission Oaks, an owner of a mobilehome park in the City of Hollister, brought suit in federal court challenging the City of Hollister's mobilehome park rent control ordinance. Mission Oaks previously filed a challenge to the rent control ordinance in state court alleging the same state and federal constitutional and § 1983 violations.

Defendants, City of Hollister et al, move for dismissal on the grounds that the pending action in state court duplicates the instant action, that the state suit was filed prior to the filing in federal court and that there have been substantial proceedings in the state court. Defendants

maintain that dismissal is appropriate under the doctrine of abstention and in order to avoid duplicative and piecemeal litigation.

For the reasons discussed below, the Court GRANTS Defendants' Motion to Dismiss on the grounds of *Younger* abstention.

II. BACKGROUND

A. State Court Proceedings

Mission Oaks filed an action in San Benito County Superior Court in September 1990, challenging the City of Hollister's Mobilehome Park Rent Control ordinance. Plaintiff alleged the following causes of action: inverse condemnation; denial of procedural due process; violation of equal protection; preemption; unconstitutional special tax; violation of 47 U.S.C. § 1983; preliminary and permanent injunction; declaratory relief; writ of mandate for general plan invalidity.

In February 1991, Mission Oaks filed a petition with the Hollister Rent Commission for a rent increase pursuant to the hearing process et forth in the Ordinance. Plaintiff was granted an increase in a lesser amount than had been requested. On July 12, 1991, Plaintiff filed a Petition for Writ of Mandate in the Superior Court challenging the Rent Commission's decision. Plaintiff alleged that the

Commission failed to make the necessary findings and that the evidence did not support the Commission's decision.

On July 11, 1991, Plaintiff filed a Motion for Summary Judgment on its claims that the Ordinance violated Plaintiff's rights to procedural due process and equal protection and that the Ordinance constituted a special tax. (*See* Defs.' Req. Judicial Notice, Ex. C).

On October 1, 1991, subsequent to the Ninth Circuit's decision in another challenge to a mobilehome park rent control ordinance, *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991), Mission Oaks filed in the state court a "Reservation to Litigate Federal Claims in the United States District Court." Defendants moved to strike the "Reservation."

At a hearing on October 22, 1991, the Superior Court denied the Plaintiff's summary judgment motion, and Defendants' motion for judgment on the pleadings as well as Defendants' motion to strike the Reservation. The judge did not rule on the legal effect of the Reservation. (Defs.' Mem. P. & A. Supp. Mot. Dismiss at 9).

Approximately two months later, on December 20, 1991, a hearing was held on Plaintiff's Writ challenging the Rent Commission's decision on Plaintiff's rent increase request. The Court denied the Writ, finding that "substantial

evidence" existed for the Commission to make its decision. (Pl.'s Opp'n Mot. Dismiss at 5).

The trial in Superior Court is scheduled to begin in May 1991.

B. Federal Court Proceeding

On October 30, 1991, Mission Oaks filed this action in District Court alleging the same claims as those in the state court action and an additional claim for substantive due process violation. Defendants now move for dismissal on the grounds of abstention and the policy rationale of avoidance of duplicative and piecemeal litigation. The Court notes that Defendants seek to cover all bases by arguing that any of the three established abstention doctrines as enunciated in *Younger v. Harris*, 401 U.S. 37 (1971); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); and *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941) are applicable. Additionally, Defendants content that the Supreme Court's decision in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976), holding that in exceptional circumstances federal courts may dismiss actions in order to avoid duplicative litigation, is equally appropriate.

For the reasons discussed more fully below, this Court finds that dismissal under the *Younger* abstention doctrine in appropriate.

III. DISCUSSION

A. Ninth Circuit's Decisions on Takings Claims

Concurrently with Plaintiff's suit pending in state court, on July 9, 1991, the Ninth Circuit issued its decision in *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991). That case also involved a challenge to a mobilehome park rent control ordinance. In his opinion, Judge Kozinski reviewed the question of ripeness of the takings claim and found that the plaintiff had demonstrated "its inability to 'obtain just compensation through an inverse condemnation action under any circumstances'" in state court. *Sierra Lake*, 938 F.2d at 955 (quoting *Austin v. City and County of Honolulu*, 840 F.2d 678, 680 (9th Cir.) *cert. denied*, 488 U.S. 852 (1988)).

Judge Kozinski reasoned that because California courts had not followed the Ninth Circuit's holding in a previous takings claim case, *Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1986) *cert. denied*, 485 U.S. 940 (1988), plaintiffs making similar claims need not exhaust their state court remedies before proceeding in federal court. *Sierra Lake*, 938 F.2d at 954-55.

The *Hall* decision, also penned by Judge Kozinski, found that mobilehome park owners challenging a rent control ordinance had stated a takings claim based on the

Supreme Court's holding in a physical takings case, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). However, subsequent opinions in state court suits have declined to follow that rationale. *See*, *Casella v. City of Morgan Hill*, 280 Cal. Rptr. 876, 881 (Cal. Ct. App. 1991) ("We repudiate *Hall's* attempt to bootstrap a mobilehome rent control ordinance -- an economic regulation -- to the Supreme Court's very narrow holding in *Loretto.*"); *See also*, *Yee v. City of Escondido*, 274 Cal. Rptr. 551 (Cal. Ct. App. 1990), *cert. granted in part*, 112 S.Ct. 294, *and motion to consolidate denied*, 112 S.Ct. 435 (1991), *and argued* Jan. 22, 1992.

Mission Oaks maintains that prior to *Sierra Lake* it was unable to bring suit in federal court because federal district courts routinely dismissed such claims on grounds of ripeness. Plaintiff urges the Court to adopt Judge Kozinski's view that state courts do not provide plaintiffs with an adequate opportunity to vindicate their constitutional claims.

In addition Plaintiff contends that the Reservation filed in the state court allows Mission Oaks to withdraw its federal constitutional and § 1983 claims from the state court proceeding.

As the Court's decision will illuminate further, this Court is not persuaded. The assumption that the court would

dismiss on grounds of ripeness amounts to conjecture and sophistry. Mission Oaks had the Opportunity to file originally in federal court but chose to proceed initially in state court.

B. Abstention Doctrines

The abstention doctrines enunciated in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), and *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496 (1941), are inapplicable in the present context. There is no complex state administrative procedure being challenged as required under *Burford* abstention. Nor is this a situation in which a state court ruling on state law would obviate the need for a ruling on the federal constitutional claims, as required in order for a court to abstain under *Pullman*.

Similarly, the Court does not find the existence of exceptional circumstances warranting dismissal in order to avoid duplicative and piecemeal litigation, as required for dismissal under the *Colorado River* doctrine. *Colorado River*, 424 U.S. at 818-19, (discussing the elements necessary and factors to consider in determination of "exceptional circumstances" which warrant a dismissal by federal court.). *See also Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25-26 (1983) (stating that when considering dismissal under the *Colorado River*

doctrine, courts are to "ascertain whether there exists 'exceptional' circumstances, the clearest of justifications, that can suffice under *Colorado River* to justify the surrender of that jurisdiction.").

In this instance, the fact that Mission Oaks filed suit in federal and state court does not rise to the level of exceptional circumstances necessary for the Court to surrender its jurisdiction.

1. Younger Abstention

In *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court held that federal courts may not enjoin pending state court criminal proceedings. This principle has been expanded to apply to pending civil actions between private litigants, and to administrative proceedings. *See, e.g., Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987); *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619 (1986).

In *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) the Supreme Court developed a three part test to determine when *Younger* abstention is appropriate: (1) the state proceedings are ongoing; (2) the proceedings implicate an important state interest; (3) the state proceedings provide an adequate

opportunity to raise federal questions. *Middlesex*, 457 U.S. at 432.

The Ninth Circuit follows the three prong test. *Fresh Int'l Corp. v. Agricultural Labor Relations Bd.*, 805 F.2d 1353, 1357 (9th Cir. 1986). And as the court remarked in *Fresh Int'l Corp.*, "*Younger* and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings, absent extraordinary circumstances." 805 F.2d at 1356. In the instant case, the Court finds that the three prongs of *Middlesex* are met and *Younger* abstention is appropriate.

a) State Proceedings Are Ongoing

Mission Oaks initiated suit in state court over sixteen months ago. The state court has heard oral argument and made rulings on a summary judgment motion as well as Plaintiff's Writ Petition challenging the Rent Commission's action. Further, trial is set to commence in May 1992.

In contrast, the federal suit was filed only four and one-half months ago and this is the first matter the Court has had before it. Plaintiff has filed a claim, Defendant has not answered but has responded with this Motion to Dismiss. The Court has made no prior rulings on this matter. The federal court proceedings are still within the embryonic stage. *See, Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229,

238 (1984) (citing *Doran v. Salem Inn*, 422 U.S. 922, 929 (1975)).

Moreover, the Ninth Circuit has noted that in determining whether *Younger* applies, the "critical question is not whether the state proceedings are still ongoing but whether the state proceedings were underway before initiation of the federal proceedings." *Beltran v. California*, 871 F.2d 777, 782 (9th Cir. 1988) (citing *Kitchen v. Bowen*, 825 F.2d 1337, 1341 (9th Cir 1987), *cert. denied*, 485 U.S. 934 (1988)). *See also, Fresh Int'l Corp.*, 805 F.2d at 1358 (Abstention required only when the state proceedings have been initiated before any proceedings of substance on the merits have taken place in federal court) (quoting *Hicks v. Miranda*, 422 U.S. 332, 349 (1975)).

As noted above, Plaintiff initiated its action in state court over a year ago. This present Motion is the first matter to be considered in federal court. Thus no proceedings on the merits have taken place in federal court and the Court concludes that the first prong of the *Middlesex* test has been met.

b) Important State Interest

California has a state regulatory scheme regarding mobilehome parks. *See, e.g.*, Cal. Civ. Code § 798 et seq (West 1982 & Supp. 1992) (Mobilehome Residency Law);

Cal. Govt Code §§ 65863.7, 65863.8 (West 1983 & Supp. 1992) (Zoning Regulations); § 66427.4 (West 1983 & Supp. 1992) (Subdivisions, Maps, Conversion of Mobilehome Park).

Further importance of the regulation of mobilehome park rent is signified by the number of jurisdictions regulating rent: "Mobile homes rent controls exist in over 75 jurisdictions representing in excess of 35% of all mobile homes in this state." Werner Z. Hirsch & Joel G. Hirsch, *Legal-Economic Analysis of Rent Controls in a Mobilehome Context: Placement Values and Vacancy Decontrol*, 35 UCLA L. Rev. 399, 407-11 (1988).

Mission Oaks notes that newly constructed mobilehome parks are exempt from some of the state regulatory provisions and argues that this exemption indicates that mobilehome park rent control is not an important state interest. This is not persuasive. The fact is that the state legislature has enacted a range of provisions regulating the use, rental and zoning of mobilehome parks. The Court infers from this regulatory scheme that California has a substantial interest in enforcing and considering the constitutionality of mobilehome park rent control ordinances. *See, Fresh Int'l Corp.*, 805 F.2d at 1358-61 (noting Supreme Court's opinion in *Ohio Civil Rights Comm'n v. Dayton*

Christian Schools, Inc., 477 U.S. 619 (1986), citing with approval courts' decisions finding important state interests to exist in broad range of circumstances).

c) Adequate Opportunity to Raise Federal Claims

Mission Oaks initially chose to raise all of its constitutional claims in state court and filed the state lawsuit prior to attempting to obtain a rent increase pursuant to the provisions of the Ordinance. Notwithstanding Judge Kozinski's provocative statement in *Sierra Lake*, 938 F.2d at 955, this Court concludes that Plaintiff has not established that the available state court procedure will not provide an adequate opportunity to challenge the Hollister rent control ordinance.

Another district court considering this issue in a motion to dismiss found that state court proceedings provide an adequate forum in which to challenge mobilehome park rent control ordinances. *Casella v. City of Morgan Hill*, No. 91-1034, 1991 U.S. Dist. LEXIS 14904 (N.D. Cal. Oct. 4, 1991), *petition for cert. filed*, 60 U.S.L.W. 3322 (U.S. Oct. 15, 1991). The *Casella* opinion noted that state court proceedings provided a "full and fair opportunity to litigate" federal claims in state court. *Casella*, No. 91-1034, LEXIS 14904 at *7.

Casella opined that the state appellate court in *Casella v. City of Morgan Hill*, 280 Cal. Rptr. 876 (1991), rendered a thoughtful opinion explicating its decision to decline to follow the Ninth Circuit's rationale in *Hall*, 833 F.2d 1270. The Court concurs with the *Casella* District Court's finding that prior to rejecting the arguments, the state appeals court gave meaningful consideration to the *Casella* plaintiffs' contentions that *Hall* was controlling precedent. *Casella*, No. 91-1034, LEXIS 14904, at *7-8.

Mission Oaks employs the same rationale regarding the effect of both *Hall* and *Sierra Lake* that the *Casella* plaintiffs did in their argument that *Hall* was controlling precedent. Mission Oaks asserts that Judge Kozinski's statement in *Sierra Lake* regarding state courts' refusal to follow *Hall* validates its argument that Mission Oaks has no adequate opportunity to raise federal claims in state court.

However, as *Casella* noted in its review of the argument, while United States Supreme Court decisions are binding on state courts, federal appeals court decisions are persuasive. not controlling precedent. *Casella*, No. 91-1034, LEXIS 14904, at *10, (citing 9 Witkin, *California Procedure* Appeal § 779 at 750 (3rd ed. 1985)). In rejecting the application of the rationale justifying a physical takings claim to a challenge to a rent control ordinance (i.e., a "regulatory

taking"), the state appeals court distinguished *Hall* from *Loretto*, 458 U.S. 419 (1982), in a reasoned manner. *Casella*, No. 91-1034, LEXIS 14904 at *7-8.

Additionally, as Mission Oaks acknowledged at oral argument, the state court in the present action will be bound by the Supreme Court's decision in a similar challenge to a local rent control ordinance which was recently argued before the Supreme Court. *Yee v. City of Escondido*, 274 Cal. Rptr. 551 (1990), *cert. granted in part*, 112 S.Ct. 294, *and motion to consolidate denied*, 112 S.Ct. 435 (1991), *and argued* Jan. 22, 1992.

Therefore, the Court concludes that the state court proceeding provides Mission Oaks with an adequate forum within which to pursue its federal claims.

Finally, while *Younger* abstention usually does not apply in situations in which the federal plaintiff is also the plaintiff in state court, *Fresh Int'l Corp.*, 805 F.2d at 1360 n.8, the Court here finds *Younger* applicable. Mission Oaks has in effect sought to "shield" itself from unfavorable state court decisions on takings law. *See, Crawley v. Hamilton County Comm'rs*, 744 F.2d 23, 30 (6th Cir. 1984) (*Younger* abstention appropriate where state court plaintiffs "attempting to use federal courts to shield themselves from state court enforcement efforts."). In the

instant case the Court finds that plaintiff has unsuccessfully argued that state court proceedings will not provide an adequate opportunity to raise its federal claims. *Younger* is controlling and the Court abstains from the action.

2. Plaintiff's "Reservation" Not Applicable

A reservation of litigation of federal claims is appropriate in *Pullman* abstention situations where the federal court retains jurisdiction but parties are sent to state court to obtain ruling on a state law question. *England v. Louisiana State Bd. of Medical Examiners* 375 U.S. 411 (1964). *See also* Erwin Chemerinsky, *Federal Jurisdiction* § 12.3 1989 (discussing procedure to be used in *Pullman* abstention and applicability of *England*). The instant case does not present such a situation.

Here, Mission Oaks filed a RESERVATION OF RIGHT TO LITIGATE FEDERAL CLAIMS IN THE UNITED STATES DISTRICT COURT with the state court prior to filing the present federal suit. The Reservation was filed approximately one year after Plaintiff brought suit in state court; after Plaintiff's Motion for Summary Judgment filed in state court and after consideration of the Plaintiff's Writ Petition challenging the Rent Commission's action. Thus the case had proceeded substantially prior to Mission Oaks determining it would file in federal court.

The Court concludes that Mission Oaks' "*England*" Reservation does not control in this situation. Plaintiff had the opportunity to file in federal court prior to filing in state court or at a point in time closer to the initiation of the state proceedings.

IV. CONCLUSION

The Court concludes that abstention on *Younger* grounds is appropriate. Therefore, Defendants' Motion to Dismiss is GRANTED. Plaintiff's claims are DISMISSED.

Good Cause Appearing, IT IS SO ORDERED.

Dated: 3/30/92

/s/ JAMES WARE
JAMES WARE
United States District Judge

APPENDIX E
E-1

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Filed May 7, 1992

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BENITO

MISSION OAKS MOBILEHOME PARK, Plaintiff and Petitioner, v. CITY OF HOLLISTER, and DOES 1 through 100, inclusive, Defendants and Respondents.	) CASE NO. 17362)) STIPULATION AND) ORDER RE: STAY) OF PROCEEDINGS)
MISSION OAKS HOMEOWNERS ASSOCIATION, Defendant/Intervener.	)

IT IS HEREBY STIPULATION by and between Plaintiff, MISSION OAKS MOBILEHOME PARK ("Plaintiff"), Defendant, CITY OF HOLLISTER, ("Defendant") and Intervener MISSION OAKS HOMEOWNERS ASSOCIATION ("Intervener") by and through their respective counsel of record, subject to the approval of the Court, as follows:

1. Defendant's Motion to Stay Trial shall be taken off-calendar and withdrawn and the Parties further stipulate that none of the contentions or arguments set forth in Defendant's Motion to Stay Trial are conceded;

2. The Parties hereby stipulate and agree that this action is stayed until either: (a) conclusion of the appeal in San Benito County Superior Court Case Number 18223, or (b) conclusion of the appeal to the United States Court of Appeal for the Ninth Circuit in the action which proceeded before the United States District Court Northern District of California as Case Number C-91-20733 JW EAI;

3. Plaintiff shall be entitled to terminate the Stay in this action by giving notice to the above-entitled Court and the Parties hereto within thirty (30) days of either: (a) service of the remittitur by the Court of Appeal in San Benito County Superior Court Case Number 18223, or (b) final disposition by the United States Court of

Appeals for the Ninth Circuit in Northern District, Case Number C-91-20733 JW EAI;

4. Plaintiff, at its option, shall be entitled to consolidate the pleadings in San Benito County Superior Court Case Number 18223, with the pleadings in the above-entitled action, subject to the approval of the court;

5. Notwithstanding the foregoing, the Court may for good cause shown, dissolve the stay as it deems appropriate.

Dated: April 22, 1992

HART, KING & COLDREN

By: [JAMES M. TRUSH]
ROBERT S. COLDREN
JAMES M. THRUSH
Attorneys for Plaintiff,
MISSION OAKS
MOBILEHOME PARK

Dated: April 23, 1992

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DONALD R. LINCOLN
Attorneys for
Defendant, CITY OF
HOLLISTER

Dated: April 24, 1992

By: [MARK HASEY]
MARK HASEY
Attorney for Defendant/
Intervener MISSION
OAKS HOMEOWNERS
ASSOCIATION

IT IS SO ORDERED

Dated: May 7, 1992

By: [MARK THOMAS]
Judge of the
Superior Court

FILED
DEC 13 1993
OFFICE OF THE CLERK

No. 93-756

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1993

MISSION OAKS MOBILE HOME PARK,
a California General Partnership,
Petitioner,
vs.
CITY OF HOLLISTER, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Ninth Circuit was correct in affirming the dismissal of a federal suit on *Younger* abstention grounds where the park owner had filed challenges to a mobilehome park space rent control ordinance in state court alleging the same violations prior to filing the federal suit?

2. Whether the Ninth Circuit was correct in concluding that a purported reservation of federal claims filed in the state court over a year after the state action was commenced was inapplicable to prevent abstention on *Younger* grounds?

LIST OF PARTIES

The parties to the proceeding below were the Petitioner, Mission Oaks Mobile Home Park, a California general partnership and Respondents City of Hollister, Hollister City Council and Hollister Mobilehome Rent Commission.

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No. 93-756

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1993

MISSION OAKS MOBILE HOME PARK,
a California General Partnership,
Petitioner,
VS.
CITY OF HOLLISTER, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, City of Hollister, et al. ("City") respectfully request that this Court deny Mission Oaks Mobile Home Park's ("Mission Oaks") Petition for Writ of Certiorari ("Petition") seeking review of the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") opinion in this case.

OPINION BELOW

On March 30, 1992, the United States District Court for the Northern District of California issued its Order granting City's Motion to Dismiss and dismissing Mission Oaks' action. See, *Mission Oaks Mobile Home Park v. City of Hollister,* 788 F.Supp. 1117 (N.D. Cal. 1992); see also, Order, Petition at D1-16.

On March 30, 1993, the Ninth Circuit issued its opinion affirming the Judgment of Dismissal. See, *Mission Oaks Mobile*

Home Park v. City of Hollister, 989 F.2d 359 (9th Cir. 1993); see also, Slip Opinion, Petition at A1-12.

On August 13, 1993, the Ninth Circuit issued an unpublished Order denying Mission Oaks' Petition for Rehearing and rejecting the Suggestion for a Rehearing En Banc. See, Petition at B1-2.

JURISDICTION

The Ninth Circuit decision was filed March 30, 1993. On or about April 13, 1993 Mission Oaks filed a Petition for Rehearing. On August 13, 1993 the Ninth Circuit denied the Petition for Rehearing. Mission Oaks' Petition for Certiorari was docketed with the United States Supreme Court on November 12, 1993. The jurisdiction of the United States Supreme Court was invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fifth Amendment to the United States Constitution provides in pertinent part:

> "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Title 42, United States Code, Section 1983, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The California Constitution, Article I, Section 7, provides in pertinent part:

> A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws . . .

The California Constitution, Article I, Section 19, provides in pertinent part:

> Private property may be taken or damaged for public use only when just compensation, . . . has first been paid to, or into court for, the owner.

The California Mobilehome Residence Law (Cal. Civ. Code, Section 798 et seq.) governs many aspects of the relationship between a mobilehome park owner and a mobilehome owner residing on a rented space in a mobilehome park. Civil Code, Section 798.55(a) contains legislative justification for the unique protections provided mobilehome owners. Protections include restrictions on terminating a space tenancy (e.g., Civil Code, Sections 798.55(b), 798.56) and restrictions preventing a park owner from interfering with or preventing a homeowner from selling his home to a new purchaser as long as the prospective homeowner has the financial ability to pay the space rent and does not have a prior history indicating that he or she will not comply with the rules and regulations of the park. (E.g., Civil Code, Section 798.74).

California Government Code Section 50,075 et seq. authorizes California cities to impose "special taxes" if they are approved by a two-thirds vote of the electorate. See, Government Code, Section 50,077. However, pursuant to Government Code, Section 50,076, a "special tax" does not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.

California Government Code, Section 65,300 et seq. requires that each city must adopt a comprehensive long term general plan for the physical development of the City. Among the items which must be included in the general plan is a housing element. Government Code, Section 65,580 et seq.

In May 1989, the City of Hollister enacted Ordinance No. 728 establishing mobilehome park space rent stabilization. The Ordinance permits a park owner to automatically increase space rent annually by 80% of the CPI increase or 8% whichever is less. Ordinance, Sec. 13B-5. In addition, the park owner has the

opportunity to seek additional rent increases in order to ensure that he receives a "just and reasonable return." Ordinance, Sec. 13B(1)(F); see e.g., Sec. 13B-30 (Adjustments to Net Operating Income NOI).

STATEMENT OF THE CASE

A. Background.

The City of Hollister ("City") is the County seat of rural San Benito County located approximately 50 miles south of the City of San Jose in the State of California. City has a population of approximately 19,000 of which approximately 400 reside in the mobilehome parks located within its boundaries. Mission Oaks is by far the largest park with 235 spaces.

In February 1988, the homeowners at Mission Oaks, dissatisfied with recent space rent increases asked the City to intervene and establish some type of rent stabilization. After several months investigating various alternatives (including long term leases) on May 1, 1989, the City Council adopted Ordinance No. 728 ("Ordinance") in order to "produce stability in rent increases for mobilehome park tenants while recognizing the rights of mobilehome park owners to receive a just and reasonable return on their property." Ordinance, Section 13B-1F.[1]

Ordinance Section 13B-5 permits a park owner to automatically increase his space rent annually by 80% of the CPI increase, or 8% whichever is less. It also permits the park owner to apply to the Rent Commission to further increase rents if necessary to assure that his annual Net Operating Income increases by at least 40% of the CPI increase rate. Ordinance, Section 13B-30.

---

[1]The Ordinance exempts parks where there is no space rent (e.g., homeowner owned parks) and parks with 20 or fewer spaces. Ordinance, Section 13B-9A. Since the other parks have 16 or fewer spaces, Mission Oaks is the only park subject to the Ordinance.

B. Procedural History.

1. The Initial State Court Case.

On September 28, 1990, Mission Oaks filed a Complaint in the state court challenging the constitutionality and legality of Ordinance 728. *Mission Oaks Mobile Home Park v. City of Hollister, et al.*, San Benito Superior Ct. No. 17362. In addition to alleging the Ordinance violated Article I, Sections 7 and 19 of the California Constitution, the Complaint alleged violations of the Fifth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. Section 1983 and sought attorneys fees pursuant to 42 U.S.C. Section 1988. The challenges to the Ordinance included: (1) inverse condemnation on the grounds that the Ordinance has no rational basis and is confiscatory; (2) denial of due process because the Ordinance was allegedly enacted in the absence of facts required for such enactment, has no rational basis, and fails to provide procedural due process; (3) violation of equal protection because the Ordinance fails to regulate other parks in the City; (4) preemption by the State Mobilehome Residency Law because the Ordinance purports to add requirements to a notice of termination; (5) allegations that the registration fee is an unconstitutional special tax; (6) allegations that the Ordinance violates 42 U.S.C. Section 1983 (federal taking, due process and equal protection); and (7) allegations that the Ordinance is invalid because the City's General Plan fails to meet statutory requirements. For relief, Mission Oaks sought injunctive, declaratory relief, and $1,000,000 in damages, attorney fees and costs.

On January 24, 1991, City answered denying the major allegations and raising various affirmative defenses. Following substantial discovery, in July 1991, Mission Oaks moved for Summary Judgment.

On October 1, 1991 during the hearing on Mission Oaks' Motion, but prior to a Court ruling, Mission Oaks filed a document entitled "Reservation to Litigate Federal Claims in the United States District Court" purporting to reserve its rights to raise and litigate its federal claims in the United States District Court pursuant to *England v. Louisiana State Board of Medical*

Examiners, 375 U.S. 411, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964). See, "Reservation," Petition at C1-2.[2]

On October 22, 1991 the Superior Court denied Mission Oaks' Summary Judgment Motion, City's Cross-Motion for Judgment on the Pleadings and City's Motion to strike the purported "Reservation." The Superior Court did not rule on the legal effect of the "Reservation."

Following additional proceedings, in April 1992 City moved to stay the proceedings (trial had been set for May 13, 1992) pending an appellate ruling in a pending state writ proceeding (discussed infra) which City contended would dispose of the bulk of Mission Oaks' claims. On May 7, 1992, the parties entered into a Stipulation to stay this State Court matter pending appellate court rulings on the state writ and federal court matters. See, Stipulation and Order, Petition E1-4.

2. The State Court Writ Proceeding.

In January 1991, Mission Oaks filed a Petition with the City Rent Commission contending that the 80% CPI permissive space rent increase was insufficient and seeking a monthly rent increase of $59 per month. Following hearings in April and May 1991 the Rent Commission granted Mission Oaks a monthly space rent increase of $15.86 plus an additional increase of $3.82 per month for 36 months.

On July 12, 1991, Mission Oaks filed a Petition for Writ of Mandate in state court challenging the rent increase. *Mission Oaks Mobile Home Park v. City of Hollister, et al.*, San Benito Superior Court No. 18223.[3] On December 20, 1991 the Superior

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[2]On or about October 16, 1991, Mission Oaks filed an "Amended Reservation" describing in more detail the federal claims it desired to "reserve."

[3]The "Residents of the Mission Oaks Mobilehome Park" were also named as real parties-in-interest. The Mission Oaks Homeowners Association answered on the residents' behalf and participated throughout the Writ proceeding. Although not named in No. 17362, the Mission Oaks Homeowners Association also participated in that proceeding.

Court denied the Writ finding substantial evidence supported the Commission's decision. Mission Oaks appealed and the State Court of Appeal affirmed in an unpublished decision. *Mission Oaks Mobile Home Park v. City of Hollister*, Cal. Ct. of App. 6th Dist. No. H009622 (Slip Op., June 7, 1993). The California Supreme Court denied Mission Oaks' Petition for Review in an unpublished order. *Mission Oaks Mobile Home Park v. City of Hollister*, Cal. Supreme Ct., No. S033928 (September 1, 1993).[4]

3. This Federal Action.

On October 30, 1991, Mission Oaks filed suit in federal court challenging the Ordinance on essentially the same grounds that it had previously advanced in the state court actions.[5]

The City moved to dismiss on grounds of abstention pointing out that the identical issues were being litigated by the same parties in two prior filed and pending state proceedings. On

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[4]Interestingly Mission Oaks did not attempt to file any *England* "Reservation" in this Writ proceeding. To the contrary, it specifically raised and argued claims that the Commission ruling denied it a "fair return" relying in part on federal law and cases. E.g., *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991) and *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987).

[5]The federal suit included all nine claims set forth in state Court No. 17362 (e.g., inverse condemnation (state — first cause of action; federal — fourth claim); due process (state — second cause of action; federal — second claim); equal protection (state — third cause of action; federal — third claim); preemption (state — fourth cause of action; federal — sixth claim); unconstitutional special tax (state — fifth cause of action; federal — seventh claim); violation of 42 U.S.C. Section 1983 (state — sixth cause of action; federal — fifth claim); preliminary and permanent injunction relief (state — seventh cause of action; federal — eighth claim); declaratory relief (state — eighth cause of action; federal — ninth claim); general plan invalidity (state — ninth cause of action; federal — tenth claim). In addition, the federal action included as its first claim Mission Oaks' claim that the action of the Rent Commission (the subject of the state writ proceeding No. 18223) was a violation of Procedural Due Process.

March 30, 1992, the District Court (Hon. James Ware, United States District Judge) issued its opinion dismissing the complaint on *Younger* [*Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)] abstention grounds. See, *Mission Oaks Mobile Home Park v. City of Hollister, supra*, 788 F.Supp. 1117; Petition at D1-16. The Ninth Circuit affirmed (*Mission Oaks Mobile Home Park v. City of Hollister, supra*, 989 F.2d 359, Petition at A1-12) and also denied Mission Oaks' Petition for Rehearing and Suggestion for Rehearing En Banc. Petition at B1-2.

WHY THIS WRIT SHOULD BE DENIED

Mission Oaks apparently bases its argument for granting a Writ of Certiorari on Supreme Court Rule 10.1(a) and (c) contending that the Ninth Circuit decision conflicts with several other Circuit rulings. In fact the Ninth Circuit decision is consistent with this Court's prior rulings and the other Circuit rulings are either clearly distinguishable or based upon erroneous reasoning.

I

THE NINTH CIRCUIT'S DECISION FULLY CONSIDERED AND CORRECTLY DECIDED THE ABSTENTION ISSUE

A. This Case Meets The Criteria For Younger Abstention Set Forth In This Court's Decisions.

In *Younger v. Harris*, 401 U.S. 37, 41, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), this Court held that a federal suit seeking to enjoin[6] state criminal proceedings would violate "the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances."

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[6]In an accompanying footnote, this Court held that in such circumstances declaratory relief is also improper. 401 U.S. at 41n.2. See also, *Samuels v. Mackell*, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971).

Over the past two decades this Court has extended *Younger* to also prevent federal court interference with pending state civil cases. See, e.g., *Huffman v. Pursue Ltd.*, 420 U.S. 592, 604, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975) (State nuisance action which was described as being "in aid of and closely related to" a criminal proceeding); *Juidice v. Vail*, 430 U.S. 327, 334, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977) (Civil contempt for failure to appear for state court deposition emphasizing a state's interest in its contempt process); *Trainor v. Hernandez*, 431 U.S. 434, 444, 97 S.Ct. 1911, 52 L.Ed.2d 486 (1977) (Civil action to return fraudulently obtained welfare payments indicating "the principles of *Younger* and *Huffman* are broad enough to apply to interference by a federal court with an ongoing civil enforcement action"); *Moore v. Sims*, 442 U.S. 415, 435, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979) (State proceeding concerning the custody of abused children, emphasizing the compelling state interest in removing the victims of child abuse from their parents).

The importance of the state interest in its proceeding was further stressed in *Middlesex County Ethics Committee v. Garden State Bar Ass'n.*, 457 U.S. 423, 431-32, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982), when this Court applied *Younger* to bar a federal court injunction against a pending state proceeding to discipline an attorney and stated:

> [w]here vital state interests are involved a federal court should abstain 'unless state law clearly bars the interposition of the constitutional claims' . . . '[T]he . . . pertinent inquiry is whether the state proceedings afford an adequate opportunity to raise the constitutional claims.

This Court then set forth a three pronged test:

> first, do [the] state [proceedings] . . . constitute an ongoing state judicial proceeding; second, do the proceedings implicate important state interests; and third, is there an adequate opportunity in the state proceedings to raise constitutional challenges.[7] 457 U.S. at 432.

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[7]See also, *Moses H. Cone Memorial Hospital v. Mecury Construction Corp.*, 460 U.S. 1, 26, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983) (This

In *Ohio Civil Rights Comm' v. Dayton Christian Schools Inc.*, 477 U.S. 619, 627, 106 S.Ct. 2718, 91 L.Ed.2d 512 (1986), this Court applied *Younger* to state administrative proceedings charging Dayton with sex discrimination holding *Younger* applies

> "to state administrative proceedings in which important state interests are vindicated, so long as in the course of the proceedings the federal plaintiff would have a full and fair opportunity to litigate his constitutional claims."[8]

This Court also noted that the state administrative proceedings "began before any substantial advancement in the federal action and involve an important state interest." 477 U.S. at 627n.2.

In *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987), *Younger* was further extended to civil disputes between two private parties. Pennzoil sued Texaco in the state courts for alleged interference with a contract to purchase Getty Oil Co. After Pennzoil received a jury verdict, but before Judgment was entered, Texaco filed a civil rights suit in federal district court seeking to enjoin the Judgment.

This Court reversed a federal court injunction, pointing out that *Younger* applied "not only when the pending state proceeding are criminal, but also when certain civil proceedings are pending, if the State's interest in the proceeding are so important that exercise of the federal judicial power would disregard the comity

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Court indicated that the adequacy of the state court proceeding to protect the federal plaintiff rights was also an important factor under a *Colorado River* [*Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817-818, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976)] abstention analysis).

[8]This Court pointed out that even if the constitutional claims could not be raised directly in the administrative action it would be sufficient if "constitutional claims may be raised in state-court judicial review of the administrative proceeding." 477 U.S. at 629.

between the States and the National Government." 481 U.S. at 11.[9]

In *Pennzoil*, this Court also pointed out that abstention may avoid unwarranted determination of federal constitutional questions because the state courts may resolve the issue on state statutory or constitutional grounds.[10] 481 U.S. at 11-12. After reemphasizing the importance of the state interest in enforcing its judgments (481 U.S. at 13-14) this Court held that Texaco had not met the burden of showing the inadequacies of the Texas state court procedural protection. 481 U.S. at 14-15.

In *New Orleans Public Service Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 109 S.Ct. 2506, 105 L.Ed.2d 298 (1989), this Court further explained when *Younger* abstention is appropriate. The case involved a city utility rate order which was allegedly preempted by federal law. This Court pointed out that *Younger* applies even if there is a federal preemption claim (491 U.S. at 365), that the state clearly had a substantial interest in the pending proceedings (*Ibid*) and that there was no showing that the City's rate order was "flagrantly" unlawful. 491 U.S. at 367. However, it explained that *Younger* did not extend to proceedings not "judicial in nature" (491 U.S. at 370), and found the rate making proceeding to be "legislative" rather than "judicial" and therefore not the type of proceeding to which *Younger* applies (because there was no interference with an ongoing judicial proceeding).[11] 491 U.S. at 372.

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[9]While relying on *Younger*, this Court pointed out "[t]he various types of abstention are not rigid pigeon holes into which federal courts must try to fit cases." 481 U.S. at 11n.9.

[10]The Court recognized that this consideration is very similar to that raised in *Pullman* [*Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941)] abstention cases. See, 481 U.S. at 11n.9.

[11]See also, *Ankerbrandt v. Richards*, 504 U.S. ____, 112 S.Ct. 2206, 119 L.Ed.2d 468, 485 (1992), this Court reaffirmed in a child abuse case that *Younger* abstention was inapplicable "when no state proceeding was pending nor any assertion of important state interests made."

Applying the criteria set forth in this Court's *Younger* decisions, it is apparent that the Ninth Circuit correctly affirmed the District Court's abstention:

1. There is no question that the state court proceedings here were both "judicial" and "ongoing" at the time of the abstention.

2. Both state court actions were filed *prior* to this federal action. The state Complaint in No. 17362 was filed in September 1990 and the state Writ proceeding in No. 18223 was filed in July 1991. This federal action was not filed until October 1991.

3. At the time the abstention decision was made (March 30, 1992), there has been no activity in the federal action other than the filing of the Complaint and the Motion to Dismiss. In contrast by that time in state No. 17362, the Court had already ruled on various motions including Summary Judgment and Judgment on the Pleadings, substantial discovery had occurred and the case had been set for a May 1992 trial. Meanwhile, in state No. 18223 the Court had held a hearing on Mission Oaks' Writ Petition, denied the Writ, and Mission Oaks had already appealed the result to the state intermediate appellate court.

4. Several of the claims in the federal suit were based on alleged violations of state laws (e.g., Sixth Claim — preemption by State Mobilehome Residency Law, California Civil Code Sections 798 et seq.; Seventh Claim — "special tax" under California Government Code Section 50,077; Tenth Claim — General Plan under California Government Code Sections 65,300 et seq.). Clearly these issues might be mooted by the state court's determination of pertinent state law.

5. The State of California clearly believes that mobilehome park regulation is important. See, Cal. Civ. Code Sections 798 et seq. (Mobilehome Residency Law); see also, *Yee v. City of Escondido*, 503 U.S. ____, 112 S.Ct. 1522, 118 L.Ed.2d 153, 163 (1992) (This Court pointed out California's legislature had recognized the need

of mobile home owners for "unique protection from actual or constructive eviction").

Mobilehome space rent control is manifestly an important issue in California. See, e.g., *Hirsch & Hirsch*, "Legal Economic Analysis of Rent Controls in a Mobilehome Context: Placement Values and Vacancy Decontrol," 35 U.C.L.A. L. Rev. 399, 407-411 (1988), indicating mobilehome rent control exists in over 75 California jurisdictions.[12]

In contrast, there is no specific federal statutory law governing mobilehome parks and mobilehome space rent control. While federal courts have been involved in several cases challenging the validity of local mobilehome rent control ordinances (see e.g., *Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1986), *cert. denied*, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988)), there is no question that the bulk of the cases have been brought in the state courts and therefore the state courts may have developed more expertise in dealing with these issues. See, e.g., *Yee v. City of Escondido*, *supra*, (affirming state court mobilehome rent control decision and disapproving *Hall*, *supra*); see also, *Pennell v. City of San Jose*, 485 U.S. 1, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988) (Upholding state court rent control ruling).

6. There is little question that the state court proceedings provide Mission Oaks with an adequate opportunity to raise the federal issues. In fact, Mission Oaks itself chose to raise all[13] the federal issues in its original state court action and

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[12] A more recent listing *The GSMOL Mobilehome Rent Stabilization Ordinance Handbook*, (Golden State Mobilehome Owners League, Inc. 1st Ed. 1993), Appendix B, identifies some 92 local jurisdictions in California with mobilehome rent control.

[13] Mission Oaks' contention (Petition at 5) that it was forced to raise its takings claim in state court pursuant to the ripeness requirements of *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985), fails to adequately explain why it also initially filed its federal due process and equal protection claims in state court.

writ proceeding. Mission Oaks' purported reliance on *Sierra Lake Reserve v. City of Rocklin*, 939 F.2d 951, 955 (9th Cir. 1991), to establish the inadequacy of the state court procedures, fails to emphasize that this Court vacated that decision in light of *Yee v. City of Escondido, supra.* See, *City of Rocklin v. Sierra Lake Reserve*, 503 U.S.____, 113 S.Ct. 31, 121 L.Ed.2d 4 (1992).[14]

Here where all the relevant factors[15] support abstention, it is clear that the Ninth Circuit was correct in ordering abstention.

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[14]On remand, the Ninth Circuit admitted that in fact the "[t]wo recent state court opinions [that] refused to follow our decision in Hall . . . have proved prescient." *Sierra Lake Reserve v. City of Rocklin*, 987 F.2d 662, 663 (9th Cir. 1993).

[15]Other factors which have been utilized by this Court under other abstention doctrines also support the decision to abstain. For example, it could also be argued that since both Mission Oaks and City are located in Hollister the federal forum in San Jose is more "inconvenient." See, *Colorado River Water Conservation Dist. v. United States, supra*, 424 U.S. at 819 (Inconvenience of federal forum is a factor in abstention under that analysis). Similarly abstention in favor of the state courts will prevent piecemeal litigation, duplicative adjudication and promote wise judicial administration. See, *Colorado River, supra*, 424 U.S. at 819 (Avoidance of piecemeal litigation is also a relevant factor). To the extent this case seeks declaratory relief (see ninth claim) where there is a pending adequate state court proceeding and/or would be disruptive of state efforts to establish a coherent policy with respect to matters of substantial public concern (e.g., "fair return"), abstention is also required under *Brillhard v. Excess Ins. Co.*, 316 U.S. 491, 495, 62 S.Ct. 1173, 86 L.Ed. 620 (1942), and *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943). Finally, as the District Court pointed out (see, 788 F.Supp. at 1122, Petition at D14), *Younger abstention* is appropriate in cases where state court plaintiffs are attempting to "shield themselves" from state court enforcement efforts or are anticipating adverse state court rulings. See also, *American Int'l Underwriters, Inc. v. Continental Ins. Co.*, 843 F.2d 1253, 1259 (9th Cir. 1988) ("forum shopping may be considered as *one* of the relevant factors in deciding whether to abstain under *Colorado River*).

B. The Ninth Circuit's Ruling Is In Accord With Its Prior Rulings — Any Contrary Circuit Rulings Are Distinguishable.

In a valiant attempt to create the appearance of a conflict among the Circuits, Mission Oaks contends that several Circuits have refused to apply *Younger* to cases where the federal plaintiff also initiated the state proceedings. Petition at 13-16.

Initially it should be pointed out that Mission Oaks never raised this issue before the Ninth Circuit and therefore it is respectfully submitted this Court should not entertain it. See, e.g., *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147n.2, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970); *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 362, 101 S.Ct. 1146, 67 L.Ed.2d 287 (1981). Cf., *Yee v. City of Escondido, supra*, 118 L.Ed.2d at 168-170 (This Court refused to consider a due process challenge because it was not raised or addressed below but did consider a regulatory taking challenge stating it was not a separate claim but merely a separate argument relating to taking).

While this Court may not yet have explicitly applied *Younger* abstention to a case where the prior pending state action was also initiated by the federal plaintiff, it has applied abstention in similar circumstances. For example, in *Growe v. Emison*, 507 U.S. ____, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1992), this Court reviewed the propriety of a federal district court pursuing reapportionment of state legislative and federal congressional districts in the face of prior filed state court litigation seeking similar relief.[16] Albeit without specifically citing *Younger* (see, 122 L.Ed.2d at 399) this Court ruled that the federal court had erred in not deferring to the state court's plan. See, 122 L.Ed.2d at 401.

In any event, the Ninth Circuit has interpreted *Younger* to apply where the prior state action was also initiated by the federal plaintiff. See, e.g., *Fresh International Corp. v. Agricultural Labor Relations Board*, 805 F.2d 1353, 1355 and 1360n.8 (9th Cir. 1986) (Court applied *Younger* abstention in case where the

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[16]Although the federal suit was originally filed by a separate group of plaintiffs, the original state plaintiffs intervened. See, 122 L.Ed.2d at 396-97.

federal plaintiff had initiated state court review prior to filing the federal action).

Beltran v. State of California, 871 F.2d 777 (9th Cir. 1988), is even clearer. There the federal plaintiffs first filed a declaratory action in state court alleging that a state statute was unconstitutional (871 F.2d at 779) and then "[i]n the midst of the state proceedings" filed a second declaratory judgment action in federal court. *Id.* at 781. On these facts, the Court, after noting the state proceedings were "ongoing" at the time the federal complaint was filed, ruled the trial court erred when it failed to abstain on *Younger* grounds.

In contrast to these Ninth Circuit cases, the bulk of the cases relied upon by Mission Oaks (Petition at 14-15) involved situations where *Younger* abstention was clearly inapplicable and therefore any statements concerning its inapplicability to prior state suits brought by the federal plaintiff were dicta.

In *Kercado-Melendez v. Aponte-Roque*, 829 F.2d 255 (1st Cir. 1987), *cert denied*, 486 U.S. 1044, 108 S.Ct. 2037, 100 L.Ed.2d 621 (1988), the federal plaintiff never initiated a state court action (see, 829 F.2d at 259) and therefore there was no ongoing state action to which *Younger* could apply. In *Kentucky West Virginia Gas Co. v. Penn. Public Util. Comm'n*, 791 F.2d 1111 (3rd Cir. 1986), the primary issue was whether the Natural Gas Act (15 U.S.C. Section 717 et seq.) or the Natural Gas Policy Act of 1978 (15 U.S.C. Section 3301 et seq.) preempted the local state law. In that context the state's interest was overwhelmed by the federal interest in regulating interstate natural gas rates. 791 F.2d 1116. In *Crawley v. Hamilton County Commissioner*, 744 F.2d 28 (6th Cir. 1984), while there had been a prior state court case it had been inactive for almost a year when the federal suit was filed, therefore again there was no "ongoing" state suit. See, 744 F.2d at 31.

In *Hinrichs v. Whitburn*, 975 F.2d 1329 (7th Cir. 1992), the central issue (see, 975 F.2d 1333) was whether the federal plaintiff had exhausted her state administrative remedies, and the case was dismissed on ripeness grounds. The Court denied abstention because "no prosecution had been initiated against plain-

tiff." *Ibid.*[17] To the extent this language indicates that *Younger* only applies to a criminal proceeding it is clearly wrong.

In summary, it is clear that Mission Oaks is precisely the type of case to which *Younger* abstention should apply. Abstention here is totally consistent with the notion of "comity," "Our Federalism," and "avoid[s] a duplication of legal proceedings and legal sanctions where a single suit would be adequate to protect the rights asserted." *Younger v. Harris, supra*, 401 U.S. at 44.

II

THE NINTH CIRCUIT DECISION FULLY CONSIDERED AND CORRECTLY DECIDED THE EFFECT OF THE PURPORTED STATE COURT RESERVATION

A. The State Court "Reservation" Did Not Meet The Criteria Set Forth In This Court's Decisions.

In *Railroad Comm'n of Texas v. Pullman Co., supra*, 312 U.S. 496, this Court held that a federal district court should refrain from deciding a case in which a state action is challenged in federal court as contrary to the federal constitution if there are unsettled questions of state law that may be dispositive of the case and therefore avoid the need for the federal court deciding the federal constitutional question. This abstention doctrine became known as "*Pullman* abstention."

One potential problem with "*Pullman* abstention" is that a plaintiff who wants a federal district court to decide his federal

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[17]The *Hinrichs* Court indicated that in denying abstention it had relied (see, 975 F.2d at 1333) upon language in *Alleghany Corp. v. Haase*, 896 F.2d 1046, 1053 (7th Cir. 1990), *vacated as moot, sub nom., Dillon v. Alleghany*, 499 U.S. 933, 111 S.Ct. 1383, 113 L.Ed.2d 441 (1991). The facts of *Alleghany* are similar to *Kercado-Melendez, supra*, when the insurance commissioners of Wisconsin and Indiana refused to allow it to acquire stock in another insurance company, Alleghany could have chosen to seek review in the state courts but did not do so. See, 896 F.2d at 1049. Under the circumstances, *Younger* was inapplicable because there was no pending state court proceeding.

claims may be compelled under *Pullman* to have these claims first adjudicated in the state court.

In *England v. Louisiana State Board of Medical Examiners, supra*, 375 U.S. at 419-21, this Court addressed the problem by providing that such a plaintiff could with a proper reservation in the *subsequent* state court action preserve his right to have his federal claims adjudicated by the federal court after the state court had made its decision.

From the beginning this Court has limited "*England* reservations" to cases where a *prior* filed federal court action was stayed under a *Pullman* abstention ruling pending the resolution of the *later* filed state action. See, e.g., *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 480n.14, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983) (Court applied res judicata effect of state decision to later filed federal action despite plaintiff's notice that he was prepared to pursue federal claims in federal court if his petition was denied); *Allen v. McCurry*, 449 U.S. 90, 101n.17, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980) (Court held decision of state court on federal constitutional claim was res judicata and distinguished *England* by pointing out that it involved a prior federal court abstention); see also, *Montana v. United States*, 440 U.S. 147, 163, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979) (Court indicated the *England* doctrine is limited to cases where there has been a prior federal court abstention and a federal litigant is compelled to seek state court determination of claims).

Clearly under this Court's prior rulings Mission Oaks purported "Reservation" in a prior filed state action does not meet the *England* criteria.

B. The Ninth Circuit Ruling Is In Accord With Its Prior Rulings And The Majority Of Circuits — Any Contrary Circuit Rulings Are Distinguishable.

Both the District Court (788 F.Supp. at 1122-23, Petition at D15-16) and the Ninth Circuit (989 F.2d at 362, Petition at A11) concluded that the state court "Reservation" was inappropriate in the context of *Younger* abstention. Again their decision accords with prior Ninth Circuit decisions. See, e.g., *Beltran v. State of California, supra*, 871 F.2d at 783n.8 ("When *Younger*

abstention applies, federal plaintiffs cannot reserve their federal claims from state court adjudication for later decision by the federal courts").

Most circuits clearly agree with the Ninth Circuit's approach. See, e.g., *Fuller Co. v. Ramon I. Gil, Inc.*, 782 F.2d 306, 311-12 (1st Cir. 1986) (The fact that the defendant in a state court action had continually stated that it was reserving a federal question was of no avail. Court held *England* federal claims reservation is available only "by properly invoking the jurisdiction of the federal court in the first instance"); *Schuster v. Martin*, 861 F.2d 1369, 1373-74 (5th Cir. 1988), *reh'g denied*, 866 F.2d 1417 (5th Cir. 1989) (Court determined that plaintiff's filing of a state court document purporting to reserve all his federal claims under *England* was ineffective in a case "where the plaintiff voluntarily chooses to pursue the state action first"); *Duty Free Shop, Inc. v. Administracion de Terrenos*, 889 F.2d 1181, 1183 (1st Cir. 1989) (*England* state court federal claims reservation is ineffective if the federal court abstention is not on *Pullman* grounds, e.g., *Younger* abstention);[18] *Temple of Lost Sheep Inc. v. Abrams*, 930 F.2d 178, 182-83 (2nd Cir. 1991), *cert denied*, ____ U.S. ____, 112 S.Ct. 193, 116 L.Ed.2d 153 (1991) (In a case where the Court abstains under *Younger* a federal plaintiff may not avoid preclusion by reserving in the state court its federal claims following *Younger* abstention).

The cases relied upon by Mission Oaks (Petition at 21) are distinguishable. In *Bradley v. Pittsburgh Board of Education*, 913 F.2d 1064 (3rd Cir. 1990), a teacher dismissal case, Bradley filed suit in federal court while the local Board was considering the issue and *before* initiating state court proceedings. See, 913 F.2d at 1068. In that context and with the federal suit already on file, Bradley was dismissed by the Board. In order to utilize the administrative procedure provided by state law, Bradley was required to appeal the dismissal to the Secretary of Education. Before the Secretary and later in state court, Bradley expressly

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[18]In *Duty Free Shop* the purported *England* Reservation had been made nine days before the scheduled hearing (see, 889 F.2d at 1182) not on the day of the hearing as here.

reserved under *England* his right to litigate his federal claims in federal court. *Ibid. Bradley* is distinguishable because (1) Bradley first filed in federal court; (2) defendants did not object to Bradley's express reservation; and (3) the Secretary expressly honored the reservation. 913 F.2d at 1072.

In *Barnes v. McDowell*, 848 F.2d 725 (6th Cir. 1988), *cert. denied*, 488 U.S. 1007, 109 S.Ct. 789, 102 L.Ed.2d 780 (1989), the primary issue was whether a prior state judgment foreclosed a later filed federal action. The Court applying Kentucky state law preclusion rules[19] held that because the causes of action in the two suits were not the same the district court erred in granting summary judgment.

The Court discussed abstention only in passing, noting that the District Court had ordered "the federal litigation to be held in abeyance" until the state court proceedings were resolved. 848 F.2d at 728. It discussed the "Reservation" of federal claims only in connection with its discussion of another case (*Wicker v. Board of Educ.*, 826 F.2d 442 (6th Cir. 1987)) where it explained that *after* the federal plaintiff in *Wicker* had *first* filed suit in federal court he had filed suit in state court and after the federal abstention order had filed an *England Reservation* in state court. 848 F.2d at 731. The Court pointed out that it had reversed the dismissal of the *Wicker* suit on res judicata grounds because "it was clear from the record in that case that the state courts never reached the constitutional issue." 848 F.2d at 732.

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[19]In general, Kentucky courts apply the doctrine of issue preclusion or collateral estoppel "only as to matters which were necessarily involved and determined in the former action, and is not conclusive on matters which were immaterial or unessential to the determination of the prior action or which were not necessary to uphold the judgment." 848 F.2d at 730-731.

In contrast, under California law issue preclusion applies not only to those claims actually litigated in a prior proceeding, but also those which *could have been litigated* as part of that cause of action. See, *Palomar Mobilehome Park Ass'n v. City of San Marcos*, 989 F.2d 362, 365 (9th Cir. 1993).

Here, of course, the suits were first filed in state court and there is no showing that state courts have not or will not decide the constitutional issues.

C. Mission Oaks' Reliance On The Fields Case Is Misplaced.

In a final attempt to create a cognizable conflict, Mission Oaks argues that its *England* Reservation should nevertheless apply because it was not voluntarily in state court.

Initially, it should be pointed out that in regard to the application of the doctrine of res judicata to involuntary plaintiffs, this Court in *Allen v. McCurry, supra*, stated:

> There is, in short, no reason to believe that Congress intended to provide a person claiming a federal right an unrestricted opportunity to relitigate an issue already decided in state court simply because the issue arose in a state proceeding in which he would rather not have engaged at all.
>
> 449 U.S. at 104.

See also, *Peduto v. City of North Wildwood*, 878 F.2d 725, 729 (3rd Cir. 1989) (The fact that a federal plaintiff was forced to exhaust state court taking remedies pursuant to *Williamson County Regional Planning Comm. v. Hamilton Bank of Johnson*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985), does not mean they were denied due process when the federal court then dismissed their claims based on res judicata); *Palomar Mobilehome Park Ass'n v. City of San Marcos, supra*, 989 F.2d at 365 (Court held that a mobilehome park was barred by res judicata from bringing a federal action when it had received a full and fair adjudication of its constitutional claims in a prior state action).

The case cited by Mission Oaks (Petition at 23-24) as being in conflict with these rulings (*Fields v. Sarasota Manatee Airport Authority*, 953 F.2d 1299 (11th Cir. 1992), is clearly distinguishable. In *Fields* the plaintiffs first filed in state court but raised *only* state law issues. See, 953 F.2d at 1302. After the state court proceedings were over, Fields filed in federal court raising federal claims. *Ibid.* The Eleventh Circuit affirmed the District Court's

dismissal because Fields had not adequately preserved his federal claims. In the course of its discussion, the Court pointed out that under Eleventh Circuit law a would be federal litigant may preserve access to a federal forum "despite being unable to rely on *England*" (953 F.2d at 1305) by making a formal reservation in the state court of their intent to bring their federal claims in federal court. *Ibid.* The Court indicated that such a reservation is effective only if (1) the litigant was precluded from filing his or her suit in federal court in the first instance; and (2) the litigant is in state court "involuntarily." *Id.* at 1306.

Here, while Mission Oaks may have been forced by the operation of *Williamson County* to file its "taking" claim in state court, nothing required it to do so with all its due process and equal protection claims. In fact is clear that the Mission Oaks voluntarily first chose the state court to bring all its claims and changed its mind only after *Sierra Lake* was decided and it perceived it would be more successful in federal court. This is not the type of decision which an *England* Reservation is designed to protect.[20] The Circuit Court was therefore clearly correct in its treatment of the purported *England* "Reservation."

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[20]This is especially true here, since as in *Pennzoil Co. v. Texaco Inc., supra* (see Justice Marshall's concurring opinion, 481 U.S. at 23), the "odor of impermissible forum shopping pervades this case."

CONCLUSION

After initially filing its challenges to the Hollister Ordinance in State Court, Mission Oaks changed its mind and apparently believing the federal courts would provide a more favorable forum refiled the same claims in Federal Court. Under the circumstances, this Court should deny Mission Oaks Petition seeking review of the dismissal of its federal claims on abstention grounds because it is clear that these decisions were properly made and this case otherwise fails to warrant review by this Court.[21]

DATED December 1993.

Respectfully submitted,

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[21]In upholding the Commission's rent decision in the state writ proceedings the state court necessarily determined that the Ordinance was valid and did not deprive Mission Oaks of its right to a just and reasonable return. Since a federal court would have to apply res judicata/collateral estoppel principles in accord with applicable state law (see, e.g., *Allen v. McCurry, supra*, 449 U.S. at 95-96), many, if not all, of Mission Oaks' claims would be barred.

Supreme Court, U.S.
FILED
DEC 28 1993
OFFICE OF THE CLERK

No. 93-756

In the

Supreme Court of the United States

October Term, 1993

MISSION OAKS MOBILE HOME PARK, a California General Partnership,

Petitioner,

v.

CITY OF HOLLISTER; HOLLISTER CITY COUNCIL; and HOLLISTER MOBILEHOME RENT COMMISSION,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

INTRODUCTION

Respondents City of Hollister, Hollister City Council, and Hollister Mobilehome Rent Commission (collectively, respondents or City) in their Brief in Opposition understandably tried to use to their advantage the procedural confusion that currently permeates litigation in defense of property rights.

However, this procedural confusion does not justify the City's incorrect assertion that one of the major issues in the case was not argued below. Respondents' Brief in Opposition (Opposition) at 15. At the same time, the City implies that issues that were decided against the City and were not appealed constitute grounds for denying the petition for writ of certiorari. Opposition at 14 n.15. These matters, and the confusion under which the City seeks solace, require a reply.

THE YOUNGER ABSTENTION REQUIREMENT THAT THE FEDERAL PLAINTIFF NOT BE THE PARTY THAT INITIATED THE STATE PROCEEDINGS *WAS* RAISED BELOW

It is the law that a federal plaintiff subject to *Younger* abstention, *see Younger v. Harris*, 401 U.S. 37 (1971), must have been the target and not the initiator of the state proceedings. The Ninth Circuit's departure from the decisions of this Court and of other circuits on the issue is so glaring that it cannot be countered. Perhaps this is why the City asserts that petitioner Mission Oaks Mobile Home Park (Mission Oaks) failed to raise the argument on appeal. Opposition at 15. The record will show that this assertion is wrong.

In Mission Oaks' opening brief filed in the Ninth Circuit, the following argument was made:

> Even before the court can determine whether each of three (3) elements set forth above is present, it should determine whether the federal court action falls within the type of cases subject to *Younger* Abstention. ... [T]he court's focus has never shifted from the policy

> of stopping a federal court from enjoining a state court's proceedings.
>
> ....
>
> *This is not a case in which a defendant in the state court becomes a plaintiff in the federal court seeking an injunction.*
>
> ....
>
> Thus, the policy underlying *Younger*, *Middlesex* and *Fresh Int'l Corp.* is absent here. Accordingly, this court need not go further in its analysis to determine that application of *Younger* Abstention in this instance was inappropriate.

Brief of Appellant (Appellant Brief) at 7-8 (emphasis added). Mission Oaks' reply brief in that court returned to this theme. *See* Reply Brief of Appellant (Reply Brief) at 4 ("[t]he doctrine is, in essence, a procedural device to preclude *a defendant* from 'hedging' against a potentially adverse ruling in state court. Those policies are not applicable here") (emphasis added).

In any event, even were the exact legal argument not made below, this Court could still entertain any arguments on the validity of *Younger* abstention under the circumstances of the case--as this was undeniably an issue below. *See Yee v. City of Escondido*, 503 U.S. __, 118 L. Ed. 2d 153, 169-70 (1992) (parties not limited to precise arguments made below).

The startling deviation of the Ninth Circuit on *Younger* abstention explains why the City attempts to drop the issue from the case and to enlist the aid of other

abstention doctrines. Opposition at 14 n.15. But these other doctrines were rejected by the District Court, Petition for Writ of Certiorari (Petition) at D-4, D-7, were not raised before the Ninth Circuit, *see* Brief of Appellees at 15-20, and should not now be resurrected. *See Adickes v. S. H. Kress and Co.*, 398 U.S. 144, 147 n.2 (1970) (this Court will not ordinarily consider issues not raised before the Court of Appeals).

Regardless of whether other abstention doctrines can be utilized when a federal plaintiff initiated the on-going state proceeding, only the Ninth Circuit applies *Younger* abstention in these circumstances and *Younger* is the only abstention doctrine at issue in this case. *See* Petition at A-6-10. The City has not been able to cite one case outside the Ninth Circuit to support the use of *Younger* abstention when the federal plaintiff initiated the state proceeding.[1] *See* Opposition at 15-17. This is a classic case of the dog that did not bark. Review by this Court is necessary to bring the Ninth Circuit into line with the rest of the federal courts.

---

[1] The City offers as its only example of "abstention in similar circumstances," Opposition at 15, a case that did not even involve *Younger* abstention and was in the special context of the "highly political task" of congressional redistricting, *Growe v. Emison*, 507 U.S. __, 122 L. Ed. 2d 388, 399 (1993). Our case involves rent control and property rights, not reapportionment and voting rights.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED SO THIS COURT CAN EXTEND THE REASONING OF ENGLAND BEYOND THE CONTEXT OF PULLMAN ABSTENTION

The petition demonstrates that the procedure created by this Court in *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964), should not be confined to cases involving *Pullman* abstention. Petition at 17-25; *see Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The need for such a procedure in property rights cases that are filed first in state court to satisfy the ripeness requirements of *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-97 (1985), should become clear from the confusion that is at the root of the arguments raised in respondents' Brief in Opposition.

The City argues that an *England* reservation should not apply based on questions of timing. The state case was filed first, so the City reasons *England* cannot apply. Opposition at 18. The state complaint contained federal claims before the reservation was filed, so the City reasons *England* cannot apply. Opposition at 22. But since *Williamson County* requires that claims under the Just Compensation Clause of the United States Constitution be brought in state court first, under the City's approach, these claims bear the dubious distinction of being the only federal constitutional rights that cannot be litigated in federal court.

The City attempts to distinguish *Fields v. Sarasota Manatee Airport Authority*, 953 F.2d 1299, 1306 (11th Cir. 1992), Opposition at 21. The real distinction is that no express reservation of rights was made on the record in that case, resulting in the federal claims being extinguished, while Mission Oaks made such a reservation in the state proceeding

relevant to this case, before any rulings on the merits.[2] *Compare Fields*, 953 F.2d at 1309, *with* Petition at A-5, C-1-2. If the *Fields* approach is adopted by this Court, property owners in Mission Oaks' position will have a clear and unambiguous way to preserve their federal claims when first filing a state court action. Without such a mechanism, the confusion that resulted in the procedural posture of this case will continue.

The City concedes that *Williamson County* forced Mission Oaks to file its takings claim in state court, Opposition at 22, but does not seem to grasp why the federal due process and equal protection claims were initially filed in state court. *See* Opposition at 13 n.13. Mission Oaks has explained this, Petition at 5, 24, and respondent itself notes the law behind the reason, Opposition at 20 n.19: in California, claims that *could have* been brought are merged into or barred by a final decision in state court.

---

[2] The City mischaracterizes the state writ proceeding, claiming that federal issues were raised and that federal law was relied upon in that proceeding. *See* Opposition at 7 n.4, at 13-14. Federal issues were not litigated in that case. One Ninth Circuit case was cited, at most, as analogous authority, *see, e.g.*, Memorandum of Points and Authorities in Support of Motion for Issuance of Peremptory Writ at 17. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), was cited for the innocuous, general proposition that courts exist to protect property rights, and *Yee* for the difficulty of making facial challenges. Mission Oaks' Reply Brief before the Sixth District Court of Appeal at 12. The collateral estoppel effect of the final decision in the writ action, Opposition at 23 n.21, is a matter for the District Court to decide upon remand.

See Palomar Mobilehome Park Association v. City of San Marcos, 989 F.2d 362, 364-65 (9th Cir. 1993). Once *Williamson County* forces a party to file a takings claim in state court, the property owner has the choice between filing the rest of its federal claims in that case or filing them in a federal court with the risk that the state case will conclude first and extinguish the federal forum.

Under such circumstances, the choice to file the federal claims is hardly voluntary. These procedural problems will recur until *England*-type reservations are allowed to preserve federal claims in the context of Just Compensation Clause cases filed in state courts under *Williamson County*. This Court should grant certiorari to address this vital issue.

CONCLUSION

The Ninth Circuit alone among the Courts of Appeals applies *Younger* abstention when the federal plaintiff initiated the state proceeding. The Ninth Circuit resists the use of *England* reservations outside of the context of *Pullman* abstention. Other circuits have not been so rigid, and the Eleventh Circuit has prescribed the use of an *England*-type reservation for cases such as this one, in which *Williamson County* forces a just compensation claimant into state court.

Review by this Court is necessary to resolve these important issues and conflicts. For the reasons stated in the petition, and for the reasons stated above, it is respectfully requested that certiorari be granted.

DATED: December, 1993.

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